



Journal of the House

State of Indiana

113th General Assembly

Second Regular Session

Seventeenth Meeting Day

Wednesday Morning

February 4, 2004

The House convened at 10:00 a.m. with the Speaker in the Chair.

The invocation was offered by Father Richard Miller, St. Andrew's Episcopal Church, Valparaiso, the guest of Representative Duane Cheney.

The Pledge of Allegiance to the Flag was led by Representative Cheney.

The Speaker ordered the roll of the House to be called:

T. Adams	Kromkowski }
Aguilera	Kruse
Alderman	Kuzman
Austin	LaPlante
Avery	L. Lawson
Ayres	Lehe
Bardon	Leonard
Becker	Liggett
Behning	J. Lutz
Bischoff	Lytle
Borror	Mahern
Bosma	Mangus
Bottorff	Mays
C. Brown	McClain
T. Brown	Messer
Buck	Moses
Budak	Murphy
Buell	Neese
Burton	Noe
Cheney	Orentlicher
Cherry	Oxley
Chowning	Pelath
Cochran	Pflum
Crawford	Pierce
Crooks	Pond
Day	Porter
Denbo	Reske
Dickinson	Richardson
Dobis	Ripley
Duncan	Robertson
Dvorak	Ruppel
Espich	Saunders
Foley	Scholer
Frenz	V. Smith
Friend	Stevenson
Frizzell	Stilwell
Fry	Stutzman
GiaQuinta	Summers
Goodin	Thomas
Grubb	Thompson
Gutwein	Torr
Harris	Turner
Hasler	Ulmer }
Heim	Van Haaften
Herrell	Welch
Hinkle	Whetstone
Hoffman	Wolkins
Kersey	D. Young
Klinker	Yount
Koch	Mr. Speaker

Roll Call 80: 98 present; 2 absent. The Speaker announced a quorum in attendance. [NOTE: } indicates those who were absent.]

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has overridden the veto of the Governor on Senate Enrolled Act 337.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Engrossed Senate Bills 19, 21, 22, 29, 37, 39, 41, 45, 97, 100, 104, 115, 133, 139, 144, 151, 154, 159, 171, 196, 198, 201, 202, 203, 213, 214, 215, 216, 223, 225, and 247 and the same are herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Engrossed Senate Joint Resolution 7 and the same is herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Senate Concurrent Resolutions 11 and 15 and the same are herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Senate Concurrent Resolution 18 and the same is herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Senate Concurrent Resolution 19 and the same is herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

INTRODUCTION OF BILLS

The following bills were read a first time by title and referred to the respective committees:

ESB 4 — Stilwell, Dvorak (Appointments and Claims)
A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

ESB 17 — Dvorak (Courts and Criminal Code)
A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

ESB 23 — Frenz (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

- ESB 34** — Dvorak (Courts and Criminal Code)
A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.
- ESB 35** — Kuzman, Ayres, Pond (Environmental Affairs)
A BILL FOR AN ACT concerning environmental law.
- ESB 36** — Mahern, Richardson (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning elections.
- ESB 40** — C. Brown, Budak, Day, Becker (Public Policy, Ethics and Veterans Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.
- ESB 42** — C. Brown, Buell (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning health.
- ESB 43** — T. Adams, Crooks (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning motor vehicles.
- ESB 46** — Summers, Duncan (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.
- ESB 47** — Hasler, Koch (Technology, Research and Development)
A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.
- ESB 52** — Herrell, Kruse (Environmental Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.
- ESB 65** — Frenz, Chowning, Duncan, Saunders (Local Government)
A BILL FOR AN ACT to amend the Indiana Code concerning local government.
- ESB 69** — Frenz, Alderman (Local Government)
A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.
- ESB 70** — Crawford, Espich, C. Brown (Ways and Means)
A BILL FOR AN ACT to repeal P.L. 224-2003, SECTION 68, concerning Medicaid.
- ESB 71** — Mahern, Richardson (Elections and Apportionment)
A BILL FOR AN ACT to amend the Indiana Code concerning elections.
- ESB 72** — Mahern, Richardson (Elections and Apportionment)
A BILL FOR AN ACT to amend the Indiana Code concerning elections.
- ESB 74** — Kuzman, Koch, Dvorak, Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.
- ESB 75** — Bischoff, Borrer (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning natural and cultural resources.
- ESB 83** — Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.
- ESB 85** — Welch, Scholer (Public Policy, Ethics and Veterans Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.
- ESB 86** — Fry, Richardson (Elections and Apportionment)
A BILL FOR AN ACT to amend the Indiana Code concerning elections.
- ESB 93** — Mahern, D. Young (Appointments and Claims)
A BILL FOR AN ACT to amend the Indiana Code concerning elections.
- ESB 95** — Pelath, Saunders (Commerce and Economic Development)
A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.
- ESB 106** — Kuzman, Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning technical corrections.
- ESB 135** — Denbo, Goodin, Heim, LaPlante (Education)
A BILL FOR AN ACT to amend the Indiana Code concerning education.
- ESB 137** — Denbo, Lytle, Alderman (Public Policy, Ethics and Veterans Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning firearms.
- ESB 149** — Moses, Murphy (Financial Institutions)
A BILL FOR AN ACT to amend the Indiana Code concerning local government.
- ESB 152** — Bottorff, Wolkins (Environmental Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.
- ESB 160** — Hasler, Ayres (Rules and Legislative Procedures)
A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.
- ESB 161** — C. Brown, Buell (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid.
- ESB 165** — Bottorff, Kuzman, Heim (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning environmental law.
- ESB 166** — Frenz, Heim (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 176** — Mahern, Richardson (Elections and Apportionment)
A BILL FOR AN ACT to amend the Indiana Code concerning elections.
- ESB 179** — Kuzman, Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.
- ESB 180** — Moses, Dvorak, GiaQuinta, Borrer (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning economic development.
- ESB 183** — Bischoff, Mangus (Agriculture, Natural Resources and Rural Development)
A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.
- ESB 186** — Turner, Whetstone (Public Policy, Ethics and Veterans Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.
- ESB 188** — Crawford, Becker, Welch (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning health.
- ESB 189** — Bottorff, Wolkins (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning environmental law.

- ESB 191** — Porter, Behning (Education)
A BILL FOR AN ACT to amend the Indiana Code concerning education.
- ESB 192** — L. Lawson, Becker (Courts and Criminal Code)
A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.
- ESB 194** — Orentlicher, Ruppel (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.
- ESB 211** — Hasler, LaPlante (Technology, Research and Development)
A BILL FOR AN ACT to amend the Indiana Code concerning economic development.
- ESB 222** — Bardon, Whetstone (Financial Institutions)
A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.
- ESB 226** — Stevenson, Saunders, Koch (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 231** — Porter, Scholer (Education)
A BILL FOR AN ACT to amend the Indiana Code concerning education.
- ESB 232** — Austin (Commerce and Economic Development)
A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.
- ESB 233** — Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.
- ESB 251** — Fry, Ripley (Insurance, Corporations and Small Business)
A BILL FOR AN ACT to amend the Indiana Code concerning insurance.
- ESB 252** — Frenz (Appointments and Claims)
A BILL FOR AN ACT to amend the Indiana Code concerning property.
- ESB 258** — Porter, Pond (Education)
A BILL FOR AN ACT concerning education.
- ESB 263** — Kuzman, Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.
- ESB 264** — Crawford, Buell (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning taxation.
- ESB 274** — Frenz, Koch (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 281** — Hasler, Ripley (Technology, Research and Development)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 285** — C. Brown, T. Brown (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning health.
- ESB 295** — Bischoff, Hoffman, Pond (Agriculture, Natural Resources and Rural Development)
A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.
- ESB 298** — Chowning, Cherry (Agriculture, Natural Resources and Rural Development)
A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.
- ESB 308** — Bottorff, Wolkins (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 315** — Crawford (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.
- ESB 318** — Bottorff, Wolkins (Environmental Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.
- ESB 320** — Bottorff, Wolkins (Rules and Legislative Procedures)
A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.
- ESB 322** — Bottorff, Wolkins, Grubb, Herrell (Environmental Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.
- ESB 323** — Goodin, Duncan (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning state police, civil defense and military affairs.
- ESB 344** — Murphy, Mays (Ways and Means)
A BILL FOR AN ACT concerning taxation.
- ESB 362** — Goodin, Grubb, Cherry (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals and to make an appropriation.
- ESB 374** — Grubb, Heim, Gutwein (Roads and Transportation)
A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.
- ESB 389** — Kuzman, Foley (Courts and Criminal Code)
A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.
- ESB 395** — Reske, Duncan (Roads and Transportation)
A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.
- ESB 397** — Chowning, Friend (Agriculture, Natural Resources and Rural Development)
A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.
- ESB 405** — Mahern, Kuzman, Burton, Hoffman (Financial Institutions)
A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.
- ESB 411** — Mahern, Richardson (Elections and Apportionment)
A BILL FOR AN ACT to amend the Indiana Code concerning elections.
- ESB 426** — Lytle, Turner (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning human services.
- ESB 428** — C. Brown (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning health.
- ESB 441** — Crawford, Espich (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 449** — C. Brown, Becker (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning human services.

INTRODUCTION OF JOINT RESOLUTIONS

The following joint resolutions were read a first time by title and referred to the respective committees:

ESJR 4 — Mahern (Rules and Legislative Procedures)

A JOINT RESOLUTION proposing an amendment to Article 2 of the Constitution of the State of Indiana concerning elections.

Be it resolved by the General Assembly of the State of Indiana:

SECTION 1. The following amendment to the Constitution of the State of Indiana is proposed and agreed to by this, the One Hundred Thirteenth General Assembly of the State of Indiana, and is referred to the next General Assembly for reconsideration and agreement.

SECTION 2. ARTICLE 2, SECTION 2 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED TO READ AS FOLLOWS: Section 2. (a) A citizen of the United States who is at least eighteen (18) years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election.

(b) A citizen may not be disenfranchised under subsection (a), if the citizen is entitled to vote in a precinct under subsection (c), **subsection (d)**, or federal law.

(c) The General Assembly may provide that a citizen who ceases to be a resident of a precinct before an election may vote in a precinct where the citizen previously resided if, on the date of the election, the citizen's name appears on the registration rolls for the precinct.

(d) The General Assembly may provide that a citizen who:

(1) is the child of an individual who is a registered voter of Indiana; and

(2) currently resides outside the United States;

may vote in a precinct if the citizen meets all the qualifications in subsection (a) other than residence in a precinct in Indiana.

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 12:55 p.m. with the Speaker in the Chair.

ENGROSSED HOUSE BILLS ON THIRD READING**Engrossed House Bill 1449**

Representative Pelath called down Engrossed House Bill 1449 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning family law.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 81: yeas 80, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Ford and Lanane.

Engrossed House Bill 1434

Representative Crawford called down Engrossed House Bill 1434 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 82: yeas 87, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Server and Howard.

Engrossed House Bill 1394

Representative Bosma called down Engrossed House Bill 1394 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

The bill was read a third time by sections and placed upon its

passage. The question was, Shall the bill pass?

Roll Call 83: yeas 93, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsor: Senator M. Young.

The Speaker yielded the gavel to the Speaker Pro Tempore, Representative Dobis.

Engrossed House Bill 1014

Representative C. Brown called down Engrossed House Bill 1014 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning education.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

On the motion of Representative Crooks the previous question was called. Roll Call 84: yeas 54, nays 41. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Miller, Rogers, Dillon, and Breaux.

HOUSE BILLS ON SECOND READING

The following bills were called down by their respective authors, were read a second time by title, and, there being no amendments, were ordered engrossed: House Bills 1131, 1132, 1133, 1212, 1306, 1325, 1340, and 1435.

House Bill 1009

Representative Cheney called down House Bill 1009 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1009-1)

Mr. Speaker: I move that House Bill 1009 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-1.1-17-20, AS AMENDED BY P.L.1-2004, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 20. (a) This section applies:

(1) to each governing body of a taxing unit that is not comprised of a majority of officials who are elected to serve on the governing body; and

(2) if the proposed property tax levy:

(A) for the taxing unit (other than a public library) for the ensuing calendar year is more than five percent (5%) greater than the property tax levy for the taxing unit for the current calendar year; or

(B) for the operating budget of a public library for the ensuing calendar year is more than five percent (5%) greater than the property tax levy for the operating budget of the public library for the current calendar year.

(b) As used in this section, "taxing unit" has the meaning set forth in IC 6-1.1-1-21, except that the term does not include a school corporation.

(c) **Subject to subsection (f), if:**

(1) the assessed valuation of a taxing unit is entirely contained within a city or town; or

(2) the assessed valuation of a taxing unit is not entirely contained within a city or town but the taxing unit was originally established by the city or town;

the governing body shall submit its proposed budget and property tax levy to the city or town fiscal body. The proposed budget and levy shall be submitted at least fourteen (14) days before the city or town fiscal body is required to hold budget approval hearings under this chapter.

(d) **Subject to subsection (f)**, if subsection (c) does not apply, the governing body of the taxing unit shall submit its proposed budget and property tax levy to the county fiscal body in the county where the taxing unit has the most assessed valuation. The proposed budget and levy shall be submitted at least fourteen (14) days before the county fiscal body is required to hold budget approval hearings under this chapter.

(e) The fiscal body of the city, town, or county (whichever applies) shall review each budget and proposed tax levy and adopt a final budget and tax levy for the taxing unit. The fiscal body may reduce or modify but not increase the proposed budget or tax levy.

(f) **The governing body of a public library described in subsection (a)(2)(B) is required to submit only its:**

- (1) **proposed operating budget; and**
- (2) **proposed property tax levy for its operating budget; under subsection (c) or (d). A fiscal body's review under subsection (e) is limited to the proposed operating budget of the public library and the proposed property tax levy for the library's operating budget."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1009 as printed January 30, 2004.)

FRENZ

Motion failed.

HOUSE MOTION (Amendment 1009-2)

Mr. Speaker: I move that House Bill 1009 be amended to read as follows:

Page 8, line 14, delete "A" and insert "Except as provided in subsection (g), a".

Page 8, line 20, delete "The" and insert "Subject to subsection (g), the".

Page 9, between lines 4 and 5, begin a new paragraph and insert:
"(g) A school corporation may issue bonds under this subsection after December 31, 2005, for the purpose described in this section one (1) time in addition to the issuance of bonds under subsection (b) if:

- (1) the school corporation issued bonds under subsection (b) before April 14, 2003; and**
- (2) the bonds referred to in subdivision (1) are retired before the issuance of bonds under this subsection.**

The average annual debt service on bonds issued under this subsection may not exceed the average annual debt service on the bonds referred to in subdivision (1). Except as provided in this subsection, bonds issued under this subsection are subject to the limitations in subsection (b)."

Page 11, line 31, delete "JULY 1," and insert "JANUARY 1, 2007]."

Page 11, delete line 32.

(Reference is to HB 1009 as printed January 30, 2004.)

WELCH

Motion prevailed. The bill was ordered engrossed.

House Bill 1401

Representative Kuzman called down House Bill 1401 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1401-2)

Mr. Speaker: I move that House Bill 1401 be amended to read as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 2-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 1.5. Public Officers Compensation Advisory Commission

Sec. 1. This chapter applies after December 31, 2004.

Sec. 2. As used in this chapter, "commission" refers to the public officers compensation advisory commission established by section 7 of this chapter.

Sec. 3. As used in this chapter, "growth rate" refers to the rate

of change in Indiana nonfarm income determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 4. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 5. As used in this chapter, "public employee" refers to any of the following:

- (1) An employee of the state.**
- (2) An employee of a political subdivision.**
- (3) An employee of any other entity whose salary is paid in any part from funds derived from taxes imposed by the state or a political subdivision.**

Sec. 6. As used in this chapter, "public officer" refers to any of the following:

- (1) The governor.**
- (2) The lieutenant governor.**
- (3) The secretary of state.**
- (4) The auditor of state.**
- (5) The treasurer of state.**
- (6) The attorney general.**
- (7) The clerk of the supreme court.**
- (8) The state superintendent of public instruction.**
- (9) A justice of the supreme court of Indiana.**
- (10) A judge of the court of appeals of Indiana.**
- (11) A judge of the Indiana tax court.**
- (12) A judge of a circuit, superior, probate, or county court.**
- (13) A member of the general assembly.**

Sec. 7. There is established the public officers compensation advisory commission.

Sec. 8. (a) The commission consists of the following members:

- (1) Two (2) members appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be members of the same political party.**
- (2) Two (2) members appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be members of the same political party.**
- (3) Two (2) members appointed by the governor. The members appointed under this subdivision may not be members of the same political party.**
- (4) Two (2) members appointed by the chief justice of the supreme court of Indiana. The members appointed under this subdivision may not be members of the same political party.**
- (5) One (1) member appointed by the chief judge of the court of appeals of Indiana.**

(b) The following may not be a commission member:

- (1) A public officer.**
- (2) A public employee.**
- (3) An individual who has a pecuniary interest in the salary of a public officer. For purposes of this subdivision, an individual has a pecuniary interest in the salary of a public officer if an increase in the salary of a public officer will result in an ascertainable increase in the income or net worth of the individual.**

Sec. 9. (a) The term of a commission member begins on the later of the following:

- (1) July 1 after the member is appointed.**
- (2) The day the member accepts the member's appointment.**

(b) The term of a commission member expires on July 1 of the fourth year after the year the member's term begins.

(c) A member may be reappointed to serve a new term.

Sec. 10. (a) If there is a vacancy on the commission, the public officer who appointed the member whose position is vacant shall appoint an individual to fill the vacancy.

(b) The member appointed under this section shall fill the vacancy for the remainder of the unexpired term.

Sec. 11. (a) Before July 1 of each odd numbered year, the chairman of the legislative council shall appoint one (1) member to be chair of the commission.

(b) The member appointed as chair of the commission serves as chair beginning July 1 after appointment.

(c) A member of the commission may be reappointed as chair of the commission.

Sec. 12. Five (5) commission members constitute a quorum.

The affirmative votes of at least five (5) commission members are necessary for the commission to take official action other than to adjourn or to meet to hear reports or testimony.

Sec. 13. The commission shall meet at the call of the chair and at other times as the commission considers necessary.

Sec. 14. Each member of the commission is entitled to the following:

- (1) The salary per diem provided under IC 4-10-11-2.1(b).
- (2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.
- (3) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 15. The legislative services agency shall provide administrative support for the commission. At the request of the legislative services agency, the state personnel department or the Indiana judicial center established by IC 33-13-14-2 shall assign staff to provide research and other support to assist the legislative services agency in providing administrative support to the commission.

Sec. 16. The legislative services agency may contract with consultants on behalf of the commission as the commission considers necessary to implement this chapter.

Sec. 17. Except as otherwise provided by this chapter, the commission is subject to the rules of the legislative council.

Sec. 18. The commission shall make reports to the general assembly as required by this chapter or by the legislative council.

Sec. 19. The commission shall meet at least one (1) time not later than July 1 of each even-numbered year to do the following:

- (1) Determine the growth rate from January 1 of the previous year to January 1 of the current year.
- (2) Receive information relating to the salaries of public officers.
- (3) Consider recommendations for suitable salaries for public officers.
- (4) Take testimony relating to the salaries of public officers.

Sec. 20. (a) Not later than September 1 of each even-numbered year, the commission shall make written recommendations to the:

- (1) legislative council; and
- (2) budget committee;

concerning suitable salaries for public officers.

(b) When making recommendations, the commission shall make a separate recommendation, including a recommendation for no adjustment of salary, for each separate public officer listed in section 6 of this chapter.

(c) The commission may not recommend a rate of increase in the salary of a public officer that exceeds the growth rate.

Sec. 21. A commission recommendation does not take effect unless enacted by the general assembly.

Sec. 22. There is appropriated to the legislative services agency from the state general fund money necessary for the operation of the commission.

Sec. 23. Notwithstanding IC 1-1-1-8, the provisions of this chapter are not severable."

Delete pages 2 through 4.

Page 5, delete lines 1 through 19.

Page 16, delete lines 23 through 42, begin a new paragraph and insert:

"SECTION 13. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 1-1-1-8, the provisions of this SECTION are not severable.

(b) Except as provided in this SECTION, the definitions in IC 2-5-1.5, as added by this act, apply throughout this SECTION.

(c) As used in this SECTION, "commission" refers to the public officers compensation commission established by subsection (e).

(d) As used in this SECTION "growth rate" equals two and one-half percent (2.5%).

(e) The public officers compensation commission is established.

(f) The commission consists of the following members:

- (1) Two (2) members appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be members of the same political party.

(2) Two (2) members appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be members of the same political party.

(3) Two (2) members appointed by the governor. The members appointed under this subdivision may not be members of the same political party.

(4) Two (2) members appointed by the chief justice of the supreme court of Indiana. The members appointed under this subdivision may not be members of the same political party.

(5) One (1) member appointed by the chief judge of the court of appeals of Indiana.

(g) The following may not be a commission member:

(1) A public officer.

(2) A public employee.

(3) An individual who has a pecuniary interest in the salary of a public officer. For purposes of this subdivision, an individual has a pecuniary interest in the salary of a public officer if an increase in the salary of a public officer will result in an ascertainable increase in the income or net worth of the individual.

(h) The chairman of the legislative council shall appoint one (1) member to be chair of the commission.

(i) Five (5) commission members constitute a quorum. The affirmative votes of at least five (5) commission members are necessary for the commission to take official action other than to adjourn or to meet to hear reports or testimony.

(j) The commission shall meet at the call of the chair and at other times as the commission considers necessary.

(k) Each member of the commission is entitled to the following:

- (1) The salary per diem provided under IC 4-10-11-2.1(b).
- (2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.

(3) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(l) The legislative services agency shall provide administrative support for the commission.

(m) Notwithstanding IC 4-22-2, the commission may adopt rules that have the force and effect of law to fix salaries of public officers.

(n) Except as otherwise provided by this chapter, the commission is subject to the rules of the legislative council.

(o) The commission shall meet after October 31, 2004, and before November 16, 2004, to do the following:

(1) Receive information relating to the salaries of public officers.

(2) Consider recommendations for suitable salaries for public officers.

(3) Take testimony relating to the salaries of public officers.

(4) For each public officer listed in IC 2-5-1.5-6, as added by this act, determine the most recent year that the public officer received a salary increase.

(5) Adopt, if necessary, proposed rules to set the salaries of public officers.

(p) If the commission adopts rules to change the salary of a public officer, the commission must adopt a separate rule for each separate public officer listed in IC 2-5-1.5-6, as added by this act, whose salary is to be changed.

(q) The commission is not required to adopt or amend a rule to change the salary of a public officer if the commission considers the current salary suitable.

(r) If the commission does not adopt a rule relating to the salary of a public officer, the salary of the public officer is the salary provided by law.

(s) The rate of increase in the salary of a public officer may not exceed the amount determined had the salary of the public officer increased each year since the most recent year the public officer received a salary increase by the growth rate.

(t) A rule adopted under this SECTION must be published in the January 2005 edition of the Indiana Register.

(u) A rule adopted by the commission to set the salaries of a public officer takes effect as follows:

(1) If the rule relates to the salary of the governor, the final rule takes effect January 10, 2005. However, any increase in the salary of the governor shall be paid in a lump sum on July 1, 2005.

(2) If the rule relates to the salary of a member of the general assembly, the final rule takes effect on January 1, 2005. However, any increase in the salary of a member of the general assembly shall be paid in a lump sum on July 1, 2005.

(3) If the rule relates to the salary of a public officer other than a public officer described in subdivision (1) or (2), the final rule takes effect on July 1, 2005.

(v) A rule relating to the salary of a public officer may not diminish the compensation of the public officer below its level at the time the rule becomes effective.

(w) This SECTION expires July 1, 2005."

Delete page 17.

Page 18, delete lines 1 through 9.

Renumber all SECTIONS consecutively.

(Reference is to HB 1401 as printed January 30, 2004.)

KUZMAN

Motion prevailed. The bill was ordered engrossed.

House Bill 1024

Representative Heim called down House Bill 1024 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1024-3)

Mr. Speaker: I move that House Bill 1024 be amended to read as follows:

Page 1, after line 10, begin a new paragraph and insert:

"SECTION 2. IC 6-3.1-11-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 21. (a) A taxpayer is not entitled to claim the credit provided by this chapter to the extent that it substantially reduces or ceases its operations in Indiana in order to relocate them within the industrial recovery site. A determination that a taxpayer is not entitled to the credit provided by this chapter as a result of a substantial reduction or cessation of operations shall apply to credits that would otherwise arise in the taxable year in which the substantial reduction or cessation occurs and in all subsequent years. Determinations under this section shall be made by the board.

(b) This subsection applies only to a taxpayer that makes a qualified investment for rehabilitation of property located in an industrial recovery site containing a vacant industrial facility that has at least two hundred fifty thousand (250,000) square feet of floor space but less than three hundred thousand (300,000) square feet of floor space. A taxpayer subject to this subsection is not entitled to claim the credit provided by this chapter unless the taxpayer does all the following:

(1) Pays, for each class of work described in IC 5-16-7-1(c) that is performed as part of the rehabilitation, repair, or retrofitting of the property in the industrial recovery site, a scale of wages that is not less than the common construction wage (as defined in IC 5-16-7-4) for the county in which the industrial recovery site is located.

(2) As part of the application process under this chapter, agrees to pay each year to workers employed by the taxpayer within the industrial recovery site annual compensation (including benefits) that exceeds by at least ten percent (10%) the average compensation paid by all employers during the year to all employees in the county in which the industrial recovery site is located.

A determination that a taxpayer is not entitled to the credit provided by this chapter as a result of not meeting a condition of this subsection shall be made by the board."

Renumber all SECTIONS consecutively.

(Reference is to HB 1024 as printed January 16, 2004.)

LIGGETT

Upon request of Representatives Liggett and Bosma, the Chair ordered the roll of the House to be called. Roll Call 85: yeas 44, nays 50. Motion failed. The bill was ordered engrossed.

House Bill 1039

Representative Cochran called down House Bill 1039 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1039-4)

Mr. Speaker: I move that House Bill 1039 be amended to read as follows:

"SECTION 6. [EFFECTIVE JULY 1, 2004] (a) IC 5-10.3-11-7, as added by this act, and IC 36-8-1-11, IC 36-8-6-19, IC 36-8-7-25, and IC 36-8-7.5-21, all as amended by this act, do not apply to or abrogate a contract or an agreement in effect on June 30, 2004.

(b) IC 5-10.3-11-7, as added by this act, and IC 36-8-1-11, IC 36-8-6-19, IC 36-8-7-25, and IC 36-8-7.5-21, all as amended by this act, apply to a contract or an agreement entered into, modified, renewed, or extended after June 30, 2004.

(c) This SECTION expires July 1, 2007."

Renumber all SECTIONS consecutively.

(Reference is to HB 1039 as printed January 30, 2004.)

THOMPSON

Motion prevailed. The bill was ordered engrossed.

House Bill 1042

Representative Buell called down House Bill 1042 for second reading. The bill was read a second time by title. There being no amendments, the bill was ordered engrossed.

House Bill 1268

Representative Orentlicher called down House Bill 1268 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1268-1)

Mr. Speaker: I move that House Bill 1268 be amended to read as follows:

Page 4, line 9, delete "'A misdemeanor'" and insert "D felony".

Page 11, line 11, delete "A misdemeanor" and insert "D felony".

(Reference is to HB 1268 as printed February 2, 2004.)

HINKLE

Upon request of Representatives Hinkle and Friend, the Chair ordered the roll of the House to be called. Roll Call 86: yeas 49, nays 48. Motion prevailed. The bill was ordered engrossed.

House Bill 1072

Representative Bischoff called down House Bill 1072 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1072-2)

Mr. Speaker: I move that House Bill 1072 be amended to read as follows:

Page 2, line 20, delete "explosive other than black" and insert "explosive;"

Page 2, line 21, delete "powder or common fireworks;"

Page 2, line 23, delete "other than black powder or" and insert "."

Page 2, delete line 24.

Page 2, line 37, delete ", other than black".

Page 2, line 38, delete "powder or common fireworks;"

Page 2, between lines 41 and 42, begin a new paragraph and insert: "(e) As used in this section, "regulated explosive" does not include either of the following:

(1) Consumer fireworks (as defined in 27 CFR 55.11).

(2) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices."

(Reference is to HB 1072 as printed January 30, 2004.)

BISCHOFF

Motion prevailed.

HOUSE MOTION
(Amendment 1072-3)

Mr. Speaker: I move that House Bill 1072 be amended to read as follows:

Page 2, line 18, after "(a)" insert **"This section does not apply to a person who is regulated under IC 14-34."**

(b)".

Page 2, line 25, delete **"(b)"** and insert **"(c)".**

Page 2, line 26, delete **"(a):"** and insert **"(b):"**.

Page 2, line 37, delete **"(c)"** and insert **"(d)".**

Page 2, line 40, delete **"(d)"** and insert **"(e)".**

(Reference is to HB 1072 as printed January 30, 2004.)

BISCHOFF

Motion prevailed.

HOUSE MOTION
(Amendment 1072-1)

Mr. Speaker: I move that House Bill 1072 be amended to read as follows:

Page 2, line 29, delete **"Continuing"** and insert **"At least fifteen (15) hours of continuing"**.

Page 2, line 29, after **"education"** insert **"every three (3) years"**.

(Reference is to HB 1072 as printed January 30, 2004.)

KRUSE

Motion failed. The bill was ordered engrossed.

House Bill 1083

Representative Mahern called down House Bill 1083 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1083-1)

Mr. Speaker: I move that House Bill 1083 be amended to read as follows:

Page 1, delete everything after the enacting clause and insert the following:

SECTION 1. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "committee" refers to the urban mass transportation study committee established by subsection (b).

(b) There is established the urban mass transportation study committee. The committee shall study the following:

(1) The economic impact of urban mass transportation systems upon the:

(A) passengers of urban mass transportation systems;

(B) business community; and

(C) communities served by urban mass transportation systems.

(2) The social impact of decreased levels of urban mass transportation:

(A) funding;

(B) service levels; and

(C) availability to the public.

(3) The relationships that exist among:

(A) municipalities that operate an urban mass transit system;

(B) surrounding communities; and

(C) adjacent suburban territories.

(4) Any other issue as determined by the committee.

(c) The committee consists of the following nineteen (19) members:

(1) Five (5) members appointed by the governor as follows:
(A) One (1) member who is the deputy mayor of a consolidated city.

(B) One (1) member representing business.

(C) One (1) member representing labor.

(D) One (1) member who is an economic development professional.

(E) One (1) member representing a regional transportation authority.

(2) Four (4) members who are members of the senate, appointed by the president pro tempore of the senate. Not more than two (2) members may be of the same political party.

(3) Four (4) members who are members of the house of representatives, appointed by the speaker of the house of representatives. Not more than two (2) members may be of the same political party.

(4) Six (6) members appointed by the chairman of the legislative council as follows:

(A) One (1) member who is a member of the city-county council of a consolidated city.

(B) One (1) member who is the mayor of a second class city.

(C) One (1) member who is a member of a city council of a second class city.

(D) One (1) member who is a member of a county council.

(E) One (1) member who is an officer or board member of a public transportation corporation operating in a consolidated city.

(F) One (1) member who is:

(i) a citizen of Indiana; and

(ii) not an elected official.

(d) Not more than three (3) members appointed under subsection (c)(4) may be of the same political party.

(e) If a member of the committee who holds public office ceases to hold the public office that the member held when appointed to the committee, the member vacates the member's seat on the committee.

(f) The chairman of the legislative council shall select the chairperson of the committee.

(g) The committee shall operate under the policies governing study committees adopted by the legislative council.

(h) A quorum of the committee must be present to conduct business. A quorum consists of the majority of the members of the committee. The committee may not take action on any measure, including final reports, unless the action has been approved by at least a majority of the committee.

(i) This SECTION expires December 1, 2004.

SECTION 2. An emergency is declared for this act.

(Reference is to HB 1083 as printed January 30, 2004.)

MAHERN

Motion prevailed. The bill was ordered engrossed.

The Speaker Pro Tempore yielded the gavel to the Speaker.

House Bill 1098

Representative Welch called down House Bill 1098 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1098-4)

Mr. Speaker: I move that House Bill 1098 be amended to read as follows:

Page 1, line 2, delete "January 1, 2005" and insert "July 1, 2005".

Page 1, line 9, delete "January 1, 2005" and insert "July 1, 2005".

Page 2, line 9, delete "January 1, 2005" and insert "July 1, 2005".

Page 2, line 29, delete "January 1, 2005" and insert "July 1, 2005".

Page 3, line 4, delete "January 1, 2005" and insert "July 1, 2005".

Page 3, line 22, delete "January 1, 2005" and insert "July 1, 2005".

Page 3, line 37, delete "January 1, 2005" and insert "July 1, 2005".

Page 4, line 13, delete "January 1, 2005" and insert "July 1, 2005".

Page 4, line 27, delete "January 1, 2005" and insert "July 1, 2005".

Page 4, line 37, delete "January 1, 2005" and insert "July 1, 2005".

Page 5, line 11, delete "January 1, 2005" and insert "July 1, 2005".

Page 6, line 5, delete "January 1, 2005" and insert "July 1, 2005".

Page 6, line 9, delete "January 1, 2005" and insert "July 1, 2005".

Page 13, line 13, delete "January 1, 2005" and insert "July 1, 2005".

(Reference is to HB 1098 as printed January 27, 2004.)

TURNER

Motion prevailed.

HOUSE MOTION
(Amendment 1098-1)

Mr. Speaker: I move that House Bill 1098 be amended to read as

follows:

Page 2, between lines 7 and 8, begin a new paragraph and insert:
"SECTION 3. IC 9-19-10-3 IS AMENDED TO READ AS FOLLOWS: Sec. 3. A vehicle may **not** be stopped to determine compliance with this chapter. ~~However, a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter.~~"

Renumber all SECTIONS consecutively.
(Reference is to HB 1098 as introduced.)

FOLEY

Motion failed.

HOUSE MOTION (Amendment 1098-5)

Mr. Speaker: I move that House Bill 1098 be amended to read as follows:

Page 1, between lines 7 and 8, begin a new paragraph and insert:
"SECTION 2. IC 9-13-2-42.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 42.5. **"Dependent child", for purposes of IC 9-19-11, means a natural child, an adopted child, a stepchild, a foster child, or a child for whom custody has been awarded to a custodian or guardian in a court proceeding.**"

Page 2, line 29, delete "A" and insert "Except as provided in subsection (b), a".

Page 2, between lines 40 and 41, begin a new paragraph and insert:
"(b) A person may operate a motor vehicle if there is a child in the motor vehicle who is not restrained in a child restraint system as required under subsection (a) if the child:

- (1) is at least four (4) years of age; and**
- (2) is not the dependent child of the person operating the motor vehicle."**

Page 2, line 41, delete "(b)" and insert "(c)".

Renumber all SECTIONS consecutively.

(Reference is to HB 1098 as printed January 27, 2004.)

NOE

Motion failed.

HOUSE MOTION (Amendment 1098-11)

Mr. Speaker: I move that House Bill 1098 be amended to read as follows:

Page 2, line 33, delete **"eight (8)"** and insert **"five (5)"**.

Page 2, line 37, reset in roman "it is reasonably determined that".

Page 2, line 38, reset in roman "will not fit in a child passenger restraint system".

Page 2, line 38, delete **"weighs more"**.

Page 2, delete lines 39 through 40.

Page 3, line 7, delete **"eight (8)"** and insert **"five (5)"**.

Page 3, line 7, reset in roman "it is".

Page 3, line 8, reset in roman "reasonably determined that".

Page 3, line 8, reset in roman "will not fit in a child restraint".

Page 3, line 9, reset in roman "system".

Page 3, line 9, delete **"weighs more than eighty (80) pounds or is more than"**.

Page 3, delete line 10.

Page 3, line 11, delete **"offense"**.

Page 3, line 42, delete **"eight (8)"** and insert **"five (5)"**.

Page 4, line 1, delete **"twelve (12)"** and insert **"sixteen (16)"**.

Page 4, line 24, delete **"twelve"** and insert **"sixteen"**.

Page 4, line 25, delete **"12"** and insert **"16"**.

(Reference is to HB 1098 as printed January 27, 2004.)

STUTZMAN

Upon request of Representatives Stutzman and Bosma, the Speaker ordered the roll of the House to be called. Roll Call 87: yeas 49, nays 48. Motion prevailed.

HOUSE MOTION (Amendment 1098-10)

Mr. Speaker: I move that House Bill 1098 be amended to read as follows:

Page 2, between lines 40 and 41, begin a new paragraph and insert:

"(b) A person is not required to fasten and restrain a child as provided in subsection (a)(2) if based upon the:

(1) seating capacity of the motor vehicle being operated by the person; and

(2) number of other children who are restrained as provided in subsection (a)(2);

there is insufficient remaining seating capacity to properly fasten and restrain the child in a child restraint system according to the child restraint system manufacturer's instructions."

Page 2, line 41, delete "(b)" and insert "(c)".

Page 4, line 13, delete "2," and insert **"2(a),"**.

(Reference is to HB 1098 as printed January 27, 2004.)

THOMPSON

Motion failed.

HOUSE MOTION (Amendment 1098-8)

Mr. Speaker: I move that House Bill 1098 be amended to read as follows:

Page 2, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 3. IC 9-19-10-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.5. **A vehicle may not be stopped by a law enforcement officer based upon reasonable suspicion or probable cause that a person in the vehicle has violated this chapter unless the law enforcement officer has reasonable suspicion or probable cause to believe that the operator of the vehicle or a passenger in the vehicle has violated an infraction, other than an infraction under this chapter, or committed a criminal offense.**"

Page 6, line 12, delete "IC 9-19-10-2.5 IS" and insert "THE FOLLOWING ARE".

Page 6, line 13, delete "." and insert ": IC 9-19-10-2.5; IC 9-19-10-3 (as amended by P.L.116-1998, SECTION 2 and as amended by P.L.57-1998, SECTION 2)."

Renumber all SECTIONS consecutively.

(Reference is to HB 1098 as printed January 27, 2004.)

RUPPEL

Upon request of Representatives Ruppel and Bosma, the Speaker ordered the roll of the House to be called. Roll Call 88: yeas 50, nays 39. Motion prevailed. The bill was ordered engrossed.

House Bill 1282

Representative Aguilera called down House Bill 1282 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1282-1)

Mr. Speaker: I move that House Bill 1282 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-9-27-1, AS AMENDED BY P.L.170-2002, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. This chapter applies to the following:

(1) A town:

(A) located in a county having a population of more than sixty-five thousand (65,000) but less than seventy thousand (70,000); and

(B) having a population of more than nine thousand (9,000).

(2) A town:

(A) located in a county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950); and

(B) having a population of less than one thousand (1,000).

(3) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than fifteen thousand (15,000).

(4) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than ten thousand (10,000) but less than fifteen thousand (15,000).

(5) A town having a population of more than five thousand (5,000) but less than six thousand three hundred (6,300) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000).

Renumber all SECTIONS consecutively.

(Reference is to HB 1282 as printed January 30, 2004.)

WHETSTONE

Motion failed.

HOUSE MOTION (Amendment 1282-2)

Mr. Speaker: I move that House Bill 1282 be amended to read as follows:

Page 2, line 1, delete "16" and insert "17".

Page 2, between lines 6 and 7, begin a new paragraph and insert:

"Sec. 9. As used in this chapter, "public transportation service" refers only to public surface and rail transportation service."

Page 2, line 7, delete "9" and insert "10".

Page 2, line 9, delete "10" and insert "11".

Page 2, line 11, delete "11" and insert "12".

Page 2, line 14, delete "12" and insert "13".

Page 2, line 22, delete "12" and insert "13".

Page 2, line 23, delete "11" and insert "12".

Page 3, line 8, delete "13" and insert "14".

Page 3, line 9, delete "12" and insert "13".

Page 3, line 14, delete "14" and insert "15".

Page 3, line 21, delete "15" and insert "16".

Page 3, line 25, delete "16" and insert "17".

Page 3, line 25, delete "11" and insert "12".

Page 3, line 32, delete "17 and 18" and insert "18, 19, and 20".

Page 3, line 33, delete "17" and insert "18".

Page 4, line 24, delete "18" and insert "19".

Page 4, line 28, delete "years" and insert **"twelve (12) month periods"**.

Page 4, line 31, delete "years" and insert **"twelve (12) month periods"**.

Page 4, line 34, after "district" insert **"to match federal funds for a feasibility study to develop a new rail corridor designated in the feasibility study. The money may be used to pay"**.

Page 4, line 35, delete "for the payment of".

Page 4, line 41, delete "a" and insert **"the"**.

Page 4, line 41, delete ", designated by the authority, in the county" and insert "."

Page 4, delete line 42.

Page 5, delete lines 1 through 2.

Page 5, line 3, delete "each year the authority shall" and insert **"money in the reserve account of the fund not needed to comply with subsection (c) may be used only to make distributions to a commuter transportation district under this subsection. In:**

(1) the first twenty-four (24) months in which the authority receives tax revenue under this chapter, money may be transferred".

Page 5, delete line 4.

Page 5, line 5, delete "in the fund".

Page 5, line 8, delete "." and insert **"; and**

(2) a period after the time described in subdivision (1), money may be transferred to a commuter transportation district for the commuter transportation district to develop in the county imposing the tax under this chapter the new rail corridor designated in the feasibility study funded under subsection (c)."

Page 5, line 8, beginning with "Money" begin a new line blocked left.

Page 5, line 11, after "sources." insert **"Money transferred under subdivision (2) may not be used for operating expenditures."**

Page 5, between lines 36 and 37, begin a new paragraph and insert:

"Sec. 20. (a) This subsection applies to money that:

(1) is available in the fund beginning twenty-four (24) months after the authority begins to receive tax revenue under this chapter; and

(2) is not required to be deposited in the reserve fund under section 19 of this chapter.

(b) In addition to any transfer of money under section 19 of this chapter, the authority may make additional distributions of money from the fund to a commuter transportation district only for capital expenditures for new and improved public transportation services in the county imposing the tax under this chapter.

(c) Before the authority transfers money under this section, the commuter transportation district must submit a written plan or amended plan to the authority for its review. The authority shall prescribe the format for plans and amended plans. The written plan must specify the nature and the amount of the proposed expenditures.

(d) Money transferred under this section may not be used for any purpose other than the purposes specified in the plan or amended plan."

Page 5, line 37, delete "19" and insert "21".

(Reference is to HB 1282 as printed February 2, 2004.)

AGUILERA

Motion prevailed. The bill was ordered engrossed.

ENGROSSED HOUSE BILLS ON THIRD READING

HOUSE MOTION

Mr. Speaker: I move that Engrossed House Joint Resolution 5 be reconsidered pursuant to Rule 95.

PELATH

Upon request of Representatives Bosma and Friend, the Speaker ordered the roll of the House to be called. Roll Call 89: yeas 49, nays 47. Motion prevailed.

PETITION TO VOTE

Mr. Speaker: I hereby petition the Speaker of the House to permit me to vote on the reconsideration of HJR 5. I am currently unable to travel by doctor's orders but I have reviewed HJR 5, which is in my possession. In order to represent my district, I wish to vote on this important piece of legislation.

KROMKOWSKI

Dated: February 4, 2004

Witnessed: Julie McSweeney

The Speaker granted the petition and explained his policy in this statement:

REMOTE VOTING POLICY

In extremely limited circumstances in order to achieve a constitutional majority, I will interpret Rule 44 to permit remote voting as follows:

1. There must have been a vote for passage of a bill or joint resolution. The bill must have failed for want of a constitutional majority.

2. There must be a motion for reconsideration.

3. Upon a reconsideration vote, those members:

(1) who are absent solely for medical reasons;

(2) who could not come to the State House on doctor's orders; and

(3) who petition to vote;

will be allowed to participate and vote via electronic or other means with security measures in place.

Acceptable security measures include having a State Trooper present with the absent member and having a State Trooper present in the State House to assure integrity of the system.

The purpose of this policy is to make sure that there is a constitutional majority that takes action on a bill or resolution. But, this policy will also protect the health of members who might feel compelled to come to Indianapolis against doctor's orders.

Engrossed House Joint Resolution 5

The Speaker handed down Engrossed House Joint Resolution 5, authored by Representative Bauer, for third reading:

A JOINT RESOLUTION proposing an amendment to Article 8 of the Indiana Constitution concerning education finance.

The joint resolution was reread a third time by sections and placed upon its passage. The question was, Shall the joint resolution pass?

Representative Kromkowski, who was in the presence of a state trooper, and visible to the House via computer video screen, voted yes.

Roll Call 90: yeas 51, nays 47. The joint resolution was declared passed. The question was, Shall the title of the joint resolution remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the joint resolution.

Representatives Bosma and Whetstone requested a ruling of the Chair on the issue of granting Representative Kromkowski's petition to vote on House Joint Resolution 5.

The Speaker ruled that under unusual circumstances, such as those described in the remote voting policy statement, and based upon the 1947 precedent in the Indiana Senate, the petition of Representative Kromkowski should be granted, and he should be allowed to vote.

APPEAL OF THE RULING OF THE CHAIR

Mr. Speaker: We hereby appeal the ruling of the Chair that remote voting by telephone be allowed on the third reading vote of House Joint Resolution 5.

Rule 44 provides that when a vote is called, all members "within the House" shall be counted. Rule 50 provides that no person may cast a vote for a member and that if a member attempts to vote for a member, that person shall be barred from the floor of the House for the remainder of the session and may be further punished in such manner as the House deems proper.

Jefferson's Manual Rule VIII, section 3(a) provides that a member may not authorize any other individual to cast his vote or record his presence in the House. Jefferson's Manual Rule VIII, section 3(b) provides that no individual other than a member may cast a vote or record a member's presence.

There is no authority in the Constitution of the State of Indiana, House Rules, Jefferson's Manual or custom and tradition that in any way allows a legislator to cast a vote from a remote location on a bill before the body of the House.

The actions taken today allowing a member to vote by telephone on the final passage of a bill to change the Constitution of the State of Indiana challenge the foundation of our representative democracy and the tenets of open government. When the whim of the majority governs the behavior of public officials, the people have no voice.

BOSMA
WHETSTONE

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 6:00 p.m. with the Speaker in the Chair.

The appeal to the ruling of the Chair was pending.

Representatives Bosma and Whetstone withdrew the appeal.

The Speaker ordered that the vote of Representative Kromkowski be stricken and that the vote tally on the third reading of Engrossed House Joint Resolution 5 be changed to yeas 50, nays 47. The joint resolution failed for lack of a constitution majority.

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 8:05 p.m. with the Speaker in the Chair.

Representatives Kromkowski, Pflum, and Ulmer were excused for the rest of the day.

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Engrossed Senate Bills 24, 111, 113, 132, 155, 210, 220, 261, 266, 271, 272, 278, 286, 296, 300, 307, 316, 326, 327, 342, 352, 359, 360, 363, 367, 368, 379, 383, 385, 391, 398, 406, 407, 409, 420, 422, 425, 434, 442, 446, 453, 465, 467, 469, 475, 481, 484, 490, 493, and 497 and the same are herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Senate Concurrent Resolution 6 and the same is herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

ENGROSSED HOUSE BILLS ON THIRD READING**Engrossed House Bill 1349**

Representative Chowning called down Engrossed House Bill 1349 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 91: yeas 77, nays 4. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators R. Meeks and Craycraft.

Engrossed House Bill 1345

Representative Buell called down Engrossed House Bill 1345 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 92: yeas 87, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Miller, C. Lawson, and Breaux.

Engrossed House Bill 1188

Representative Reske called down Engrossed House Bill 1188 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning gaming and to make an appropriation.

The bill was read a third time by sections and placed upon its passage.

HOUSE MOTION
(Amendment 1188-23)

Mr. Speaker: I move that Engrossed House Bill 1188 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 10, line 18, after "permit" insert "the".

Page 12, line 32, delete "Forty percent (40%)" and insert "Thirty-nine and five-tenths percent (39.5%)".

Page 13, between lines 1 and 2, begin a new line block indented and insert:

"(5) Five-tenths of one percent (0.5%) to the county fiscal body for distribution to mental health and addiction service providers located in the county."

Page 13, line 8, delete "Seventy-five percent (75%)" and insert **"Seventy-four and five-tenths percent (74.5%)"**.

Page 13, between lines 20 and 21, begin a new line block indented and insert:

"(3) Five-tenths of one percent (0.5%) to the county fiscal body for distribution to mental health and addiction service providers located in the county."

Page 13, line 24, delete "Fifty percent (50%)" and insert **"Forty-nine and five-tenths percent (49.5%)"**.

Page 13, between lines 31 and 32, begin a new line block indented and insert:

"(3) Five-tenths of one percent (0.5%) to the county fiscal body of the county in which the allowed city is located for distribution to mental health and addiction service providers located in the county."

Page 20, line 18, delete "Fifteen percent (15%)" and insert **"Fourteen and five-tenths percent (14.5%)"**.

Page 20, between lines 19 and 20, begin a new line triple block indented and insert:

"(vi) Five-tenths of one percent (0.5%) to the county fiscal body for distribution to mental health and addiction service providers located in the county."

Page 20, line 25, delete "Forty percent (40%)" and insert **"Thirty-nine and five-tenths percent (39.5%)"**.

Page 20, between lines 37 and 38, begin a new line triple block indented and insert:

"(iv) Five-tenths of one percent (0.5%) to the county fiscal body for distribution to mental health and addiction service providers located in the county."

Page 20, between lines 41 and 42, begin a new line block indented and insert:

"(3) After the distributions required under subdivisions (1) and (2), five-tenths of one percent (0.5%) of the remainder of the tax revenues deposited in the state pull tab wagering fund shall be set aside for distribution to the counties that are eligible for revenue sharing under subsection (d). The treasurer of state shall distribute the money set aside under this subdivision to the county treasurer of each eligible county according to the ratio that the county's population bears to the total population of the counties that are eligible for revenue sharing under subsection (d). Money received under this subdivision must be distributed by the county fiscal body to mental health and addiction service providers located in the county."

Page 20, line 42, delete "(3)" and insert **"(4)"**.

Page 20, line 42, delete "(1) and" and insert **"(1) through (3),"**.

Page 21, line 1, delete "(2),".

Page 21, line 15, delete "subsection (c)(2)(B)" and insert **"subsection (c)(4)(B)(ii)"**.

Page 21, line 33, delete "subsection (c)(B)(ii) in excess of" and insert **"subsection (c)(4)(B)(ii) exceeding"**.

(Reference is to HB 1188 as reprinted-printer's reprint- February 3, 2004.)

RESKE

There being a two-thirds vote in favor of the motion, the motion prevailed.

COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred Engrossed House Bill 1188, begs leave to report that said bill has been amended as directed.

RESKE

Report adopted.

The question then was, Shall the bill pass? Representative Herrell was excused from voting.

Roll Call 93: yeas 53, nays 39. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act?

There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Jackman, Weatherwax, Lanane, and Breaux.

HOUSE BILLS ON SECOND READING

House Bill 1296

Representative Klinker called down House Bill 1296 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1296-2)

Mr. Speaker: I move that House Bill 1296 be amended to read as follows:

Page 2, delete lines 4 through 42, begin a new line block indented and insert:

"(4) IC 12-29-1-1;
(5) IC 12-29-1-2;
(6) IC 12-29-1-3;
~~(7) IC 12-29-2-13;~~
(7) IC 12-29-2-1.9;
(8) IC 12-29-3-6;
(9) IC 13-21-3-12;
(10) IC 13-21-3-15;
(11) IC 14-27-6-30;
(12) IC 14-33-7-3;
(13) IC 14-33-21-5;
(14) IC 15-1-6-2;
(15) IC 15-1-8-1;
(16) IC 15-1-8-2;
(17) IC 16-20-2-18;
(18) IC 16-20-4-27;
(19) IC 16-20-7-2;
(20) IC 16-23-1-29;
(21) IC 16-23-3-6;
(22) IC 16-23-4-2;
(23) IC 16-23-5-6;
(24) IC 16-23-7-2;
(25) IC 16-23-8-2;
(26) IC 16-23-9-2;
(27) IC 16-41-15-5;
(28) IC 16-41-33-4;
(29) IC 20-5-17.5-2;
(30) IC 20-5-17.5-3;
(31) IC 20-5-37-4;
(32) IC 20-14-7-5.1;
(33) IC 20-14-7-6;
(34) IC 20-14-13-12;
(35) IC 21-1-11-3;
(36) IC 21-2-17-2;
(37) IC 23-13-17-1;
(38) IC 23-14-66-2;
(39) IC 23-14-67-3;
(40) IC 36-7-13-4;
(41) IC 36-7-14-28;
(42) IC 36-7-15.1-16;
(43) IC 36-8-19-8.5;
(44) IC 36-9-6.1-2;
(45) IC 36-9-17.5-4;
(46) IC 36-9-27-73;
(47) IC 36-9-29-31;
(48) IC 36-9-29.1-15;
(49) IC 36-10-6-2;
(50) IC 36-10-7-7;
(51) IC 36-10-7-8;
(52) IC 36-10-7.5-19; and
(53) any statute enacted after December 31, 2003, that:
(A) establishes a maximum rate for any part of the:
(i) property taxes; or
(ii) special benefits taxes;
imposed by a political subdivision; and
(B) does not exempt the maximum rate from the adjustment under this section.

(e) The new maximum rate under a statute listed in subsection (d) is the tax rate determined under STEP SEVEN of the following STEPS:

STEP ONE: Determine the maximum rate for the political subdivision levying a property tax or special benefits tax under the statute for the year preceding the year in which the annual adjustment or general reassessment takes effect.

STEP TWO: Determine the actual percentage increase (rounded to the nearest one-hundredth percent (0.01%)) in the assessed value (before the adjustment, if any, under IC 6-1.1-4-4.5) of the taxable property from the year preceding the year the annual adjustment or general reassessment takes effect to the year that the annual adjustment or general reassessment takes effect.

STEP THREE: Determine the three (3) calendar years that immediately precede the ensuing calendar year and in which a statewide general reassessment of real property does not first take effect.

STEP FOUR: Compute separately, for each of the calendar years determined in STEP THREE, the actual percentage increase (rounded to the nearest one-hundredth percent (0.01%)) in the assessed value (before the adjustment, if any, under IC 6-1.1-4-4.5) of the taxable property from the preceding year.

STEP FIVE: Divide the sum of the three (3) quotients computed in STEP FOUR by three (3).

STEP SIX: Determine the greater of the following:

(A) Zero (0).

(B) The result of the STEP TWO percentage minus the STEP FIVE percentage.

STEP SEVEN: Determine the quotient of the STEP ONE tax rate divided by the sum of one (1) plus the STEP SIX percentage increase.

(f) The department of local government finance shall compute the maximum rate allowed under subsection (e) and provide the rate to each political subdivision with authority to levy a tax under a statute listed in subsection (d).

SECTION 2. IC 6-1.1-18.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 10. (a) The ad valorem property tax levy limits imposed by section 3 of this chapter do not apply to ad valorem property taxes imposed by a civil taxing unit to be used to fund:

(1) community mental health centers under ~~IC 12-29-2-1~~ **IC 12-29-2-1.6, IC 12-29-2-13, and IC 12-29-2-2** through IC 12-29-2-6; or

(2) community mental retardation and other developmental disabilities centers under IC 12-29-1-1;

to the extent that those property taxes are attributable to any increase in the assessed value of the civil taxing unit's taxable property caused by a general reassessment of real property that took effect after February 28, 1979.

(b) For purposes of computing the ad valorem property tax levy limits imposed on a civil taxing unit by section 3 of this chapter, the civil taxing unit's ad valorem property tax levy for a particular calendar year does not include that part of the levy described in subsection (a).

SECTION 3. IC 12-29-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. (a) The county executive of a county may authorize the furnishing of financial assistance to ~~the following:~~

(1) ~~A community mental health center that is located or will be located in the county;~~

(2) a community mental retardation and other developmental disabilities center that is located or will be located in the county.

(b) Assistance authorized under this section shall be used for the following purposes:

(1) Constructing a center.

(2) Operating a center.

(c) Upon request of the county executive, the county fiscal body may appropriate annually from the county's general fund the money to provide financial assistance for the purposes described in subsection (b). The appropriation may not exceed the amount that could be collected from an annual tax levy of not more than three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars

(\$100) of taxable property within the county.

SECTION 4. IC 12-29-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) If ~~a community mental health center~~ or a community mental retardation and other developmental disabilities center is organized to provide services to at least two (2) counties, the county executive of each county may authorize the furnishing of financial assistance for the purposes described in section 1(b) of this chapter.

(b) Upon the request of the county executive of the county, the county fiscal body of each county may appropriate annually from the county's general fund the money to provide financial assistance for the purposes described in section 1(b) of this chapter. The appropriation of each county may not exceed the amount that could be collected from an annual tax levy of three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of taxable property within the county.

SECTION 5. IC 12-29-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 3. (a) The county executive of each county whose residents may receive services from ~~a community mental health center~~ or a community mental retardation and other developmental disabilities center may authorize the furnishing of a share of financial assistance for the purposes described in section 1(b) of this chapter if the following conditions are met:

(1) The facilities for the center are located in a state adjacent to Indiana.

(2) The center is organized to provide services to Indiana residents.

(b) Upon the request of the county executive of a county, the county fiscal body of the county may appropriate annually from the county's general fund the money to provide financial assistance for the purposes described in section 1(b) of this chapter. The appropriations of the county may not exceed the amount that could be collected from an annual tax levy of three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of taxable property within the county.

SECTION 6. IC 12-29-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 4. (a) Bonds of a county may be issued for the construction and equipment or the improvement of a building to house ~~the following:~~

(1) ~~A community mental health center;~~

(2) a community mental retardation and other developmental disabilities center.

(b) If services are provided to at least two (2) counties:

(1) bonds of the counties involved may be issued to pay the proportionate cost of the project in the proportion determined and agreed upon by the fiscal bodies of the counties involved; or

(2) bonds of one (1) county may be issued and the remaining counties may annually appropriate to the county issuing the bonds amounts to be applied to the payment of the bonds and interest on the bonds in the proportion agreed upon by the county fiscal bodies of the counties involved.

SECTION 7. IC 12-29-1-7, AS AMENDED BY P.L.215-2001, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 7. (a) On the first Monday in October, the county auditor shall certify to:

(1) ~~the division of mental health and addiction; for a community mental health center;~~

(2) (1) the division of disability, aging, and rehabilitative services, for a community mental retardation and other developmental disabilities center; and

(3) (2) the president of the board of directors of each center;

the amount of money that will be provided to the center under this chapter.

(b) The county payment to the center shall be paid by the county treasurer to the treasurer of each center's board of directors in the following manner:

(1) One-half (½) of the county payment to the center shall be made on the second Monday in July.

(2) One-half (½) of the county payment to the center shall be made on the second Monday in December.

~~A county making a payment under this subsection or from other~~

county sources to a community mental health center that qualifies as a community mental health center disproportionate share provider under IC 12-15-16-1 shall certify that the payment represents expenditures eligible for financial participation under 42 U.S.C. 1396b(w)(6)(A) and 42 CFR 433.51. The office shall assist a county in making this certification.

(c) Payments by the county fiscal body

(1) must be in the amounts:

(A) determined by IC 12-29-2-1 through IC 12-29-2-6; and

(B) authorized by section 1 of this chapter; and

(2) are in place of grants from agencies supported within the county solely by county tax money.

SECTION 8. IC 12-29-2-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1.2. (a) The county executive of a county may authorize the furnishing of financial assistance to a community mental health center that is located or will be located:

(1) in the county;

(2) anywhere in Indiana, if the community mental health center is organized to provide services to at least two (2) counties, including the county executive's county; or

(3) in an adjacent state, if the center is organized to provide services to Indiana residents, including residents in the county executive's county.

(b) Assistance authorized under this section shall be used for the following purposes:

(1) Constructing a community mental health center.

(2) Operating a community mental health center.

SECTION 9. IC 12-29-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1.5. (a) This section applies to a county other than Marion County.

(b) Upon request of the county executive, the county fiscal body may appropriate annually from the county's general fund the money to provide financial assistance for the purposes described in section 1.2(b) of this chapter. If a community mental health center is organized to serve more than one (1) county, upon request of the county executive each county fiscal body may appropriate annually from the county's general fund the money to provide financial assistance for the purposes described in section 1.2(b) of this chapter.

(c) The appropriation from a county other than Marion County under subsection (b) may not exceed the following:

(1) For 2004, the amount that would have been raised by an annual tax rate of three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of taxable property within the county in 2002.

(2) For 2005 and each year thereafter, the result equal to:

(A) the maximum amount determined under this section for the calendar year immediately preceding the ensuing calendar year; multiplied by

(B) the product of seven tenths (0.7) multiplied by the county's assessed value growth quotient for the ensuing calendar year, as determined under IC 6-1.1-18.5-2.

SECTION 10. IC 12-29-2-1.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1.6. (a) This section applies to a county other than Marion County.

(b) A county shall fund the operation of community mental health centers in the amount determined under subsection (c) unless a lower tax rate will be adequate to fulfill the county's financial obligations under this chapter in any of the following situations:

(1) If the total population of the county is served by one (1) center.

(2) If the total population of the county is served by more than one (1) center.

(3) If the partial population of the county is served by one (1) center.

(4) If the partial population of the county is served by more than one (1) center.

(c) The amount to be used in subsection (b) is the following:

(1) For 2004, the amount that would have been raised by an annual tax rate of one and thirty-three hundredths cents (\$0.0133) on each one hundred dollars (\$100) of taxable property within the county in 2002.

(2) For 2005 and each year thereafter, the result equal to:

(A) the maximum amount determined under this section for the calendar year immediately preceding the ensuing calendar year; multiplied by

(B) the product of seven tenths (0.7) multiplied by the county's assessed value growth quotient for the ensuing calendar year, as determined under IC 6-1.1-18.5-2.

SECTION 11. IC 12-29-2-1.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1.9. (a) This section applies only to Marion County.

(b) Upon request of the county executive, the county fiscal body may appropriate annually from the county's general fund the money to provide financial assistance for the purposes described in section 1.2(b) of this chapter. If a community mental health center is organized to serve more than one (1) county, upon request of the county executive each county fiscal body may appropriate annually from the county's general fund the money to provide financial assistance for the purposes described in section 1.2(b) of this chapter.

(c) The appropriation from Marion County under subsection (b) may not exceed the amount that could be collected from an annual tax levy of not more than three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of taxable property within the county.

SECTION 12. IC 12-29-2-2, AS AMENDED BY P.L.1-2004, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) This section applies only to Marion County.

(b) Subject to subsections (b), subsection (c), and (d), a county shall fund the operation of community mental health centers in an amount not less than the amount that would be raised by an annual tax rate of one and thirty-three hundredths cents (\$0.0133) on each one hundred dollars (\$100) of taxable property within the county, unless a lower tax rate will be adequate to fulfill the county's financial obligations under this chapter in any of the following situations:

(1) If the total population of the county is served by one (1) center.

(2) If the total population of the county is served by more than one (1) center.

(3) If the partial population of the county is served by one (1) center.

(4) If the partial population of the county is served by more than one (1) center.

(b) This subsection applies only to a property tax that is imposed in a county containing a consolidated city. (c) The tax rate permitted under subsection (a) (b) for taxes first due and payable after 1995 is the tax rate permitted under subsection (a) (b) as adjusted under this subsection. For each year in which an annual adjustment of the assessed value of real property will take effect under IC 6-1.1-4-4.5 or a general reassessment of property will take effect, the department of local government finance shall compute the maximum rate permitted under subsection (a) as follows:

STEP ONE: Determine the maximum rate for the year preceding the year in which the annual adjustment or general reassessment takes effect.

STEP TWO: Determine the actual percentage increase (rounded to the nearest one-hundredth percent (0.01%)) in the assessed value (before the adjustment, if any, under IC 6-1.1-4-4.5) of the taxable property from the year preceding the year the annual adjustment or general reassessment takes effect to the year that the annual adjustment or general reassessment is effective.

STEP THREE: Determine the three (3) calendar years that immediately precede the ensuing calendar year and in which a statewide general reassessment of real property does not first become effective.

STEP FOUR: Compute separately, for each of the calendar years determined in STEP THREE, the actual percentage

increase (rounded to the nearest one-hundredth percent (0.01%)) in the assessed value (before the adjustment, if any, under IC 6-1.1-4-4.5) of the taxable property from the preceding year.

STEP FIVE: Divide the sum of the three (3) quotients computed in STEP FOUR by three (3).

STEP SIX: Determine the greater of the following:

- (A) Zero (0).
- (B) The result of the STEP TWO percentage minus the STEP FIVE percentage.

STEP SEVEN: Determine the quotient of:

- (A) the STEP ONE tax rate; divided by
- (B) one (1) plus the STEP SIX percentage increase.

This maximum rate is the maximum rate under this section until a new maximum rate is computed under this subsection for the next year in which an annual adjustment under IC 6-1.1-4-4.5 or a general reassessment of property will take effect.

(c) With respect to a county to which subsection (b) does not apply, the maximum tax rate permitted under subsection (a) for taxes first due and payable in calendar year 2004 and calendar year 2005 is the maximum tax rate that would have been determined under subsection (d) for taxes first due and payable in 2003 if subsection (d) had applied to the county for taxes first due and payable in 2003.

(d) This subsection applies only to a county to which subsection (b) does not apply. The tax rate permitted under subsection (a) for taxes first due and payable after calendar year 2005 is the tax rate permitted under subsection (c) as adjusted under this subsection. For each year in which an annual adjustment of the assessed value of real property will take effect under IC 6-1.1-4-4.5 or a general reassessment of property will take effect, the department of local government finance shall compute the maximum rate permitted under subsection (a) as follows:

STEP ONE: Determine the maximum rate for the year preceding the year in which the annual adjustment or general reassessment takes effect.

STEP TWO: Determine the actual percentage increase (rounded to the nearest one-hundredth percent (0.01%)) in the assessed value (before the adjustment, if any, under IC 6-1.1-4-4.5) of the taxable property from the year preceding the year the annual adjustment or general reassessment takes effect to the year that the annual adjustment or general reassessment is effective.

STEP THREE: Determine the three (3) calendar years that immediately precede the ensuing calendar year and in which a statewide general reassessment of real property does not first become effective.

STEP FOUR: Compute separately, for each of the calendar years determined under STEP THREE, the actual percentage increase (rounded to the nearest one-hundredth percent (0.01%)) in the assessed value (before the adjustment, if any, under IC 6-1.1-4-4.5) of the taxable property from the preceding year.

STEP FIVE: Divide the sum of the three (3) quotients computed under STEP FOUR by three (3).

STEP SIX: Determine the greater of the following:

- (A) Zero (0).
- (B) The result of the STEP TWO percentage minus the STEP FIVE percentage.

STEP SEVEN: Determine the quotient of:

- (A) the STEP ONE tax rate; divided by
- (B) one (1) plus the STEP SIX percentage increase.

This maximum rate is the maximum rate under this section until a new maximum rate is computed under this subsection for the next year in which an annual adjustment under IC 6-1.1-4-4.5 or a general reassessment of property will take effect.

SECTION 13. IC 12-29-2-3, AS AMENDED BY P.L.79-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 3. In situations described in section ~~2(a)(1)~~ **1.6(b)(1), 1.6(b)(3), 2(b)(1), or 2(a)(3) 2(b)(3)** of this chapter, the county's maximum appropriation for part of the total operating budget of the center is determined as follows:

STEP ONE: Divide the total county population by the population of the county residing in the primary service area of

the community mental health center that is certified by the division of mental health and addiction to serve the county.

STEP TWO: Multiply the amount determined in STEP ONE by the total operating budget of the center after the operating budget of the center is reduced by the following anticipated amounts:

- (A) Gifts, except bequests.
- (B) Merchandise.
- (C) Fees.
- (D) Federal grants for direct service, except research and demonstration grants.

SECTION 14. IC 12-29-2-4, AS AMENDED BY P.L.79-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 4. (a) Except as provided in subsection (b), in situations described in section ~~2(a)(2)~~ **1.6(b)(2), 1.6(b)(4), 2(b)(2), or 2(a)(4) 2(b)(4)** of this chapter, the county's maximum appropriation for part of the total operating budget of the centers is determined in the same manner as in situations described in section ~~2(a)(1)~~ **1.6(b)(1), 1.6(b)(3), 2(b)(1), or 2(a)(3) 2(b)(3)** of this chapter.

(b) The amount derived from the calculation under subsection (a) represents the combined maximum appropriation to all centers serving the particular county. Except for a **Marion County, containing a consolidated city**, the allotment to each center shall be determined in the following manner:

(1) To determine the allotment to each center serving the total population of the county under the situation described in section ~~2(a)(2)~~ **1.6(b)(2) or 2(b)(2)** of this chapter, the amount actually appropriated shall be apportioned according to the proportion of the county's population residing in the primary service area of each center, which is certified by the division of mental health and addiction to serve the county, to the total population of the county.

(2) To determine the allotment to each center in the situation described in section ~~2(a)(4)~~ **1.6(b)(4) or 2(b)(4)** of this chapter, the amount actually appropriated shall be apportioned according to the proportion of the county's population residing in the primary service area of each center, which is certified by the division of mental health and addiction to serve the county, to the population of the county served by all centers.

SECTION 15. IC 12-29-2-5, AS AMENDED BY P.L.1-2004, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 5. (a) The maximum appropriation determined under section 3 or 4 of this chapter represents the county's absolute proportional share of each center's total operating budget.

(b) If the proportional share is less than the amount of property taxes raised under the tax rate required under section **1.6 or 2** of this chapter, the county shall appropriate only the maximum appropriation amount.

(c) If the proportional share is more than the amount of property taxes raised under the tax rate required under section **1.6 or 2** of this chapter, the county

~~(1) shall appropriate that amount and~~

~~(2) may appropriate an additional amount up to an amount that would equal the amount of property taxes raised by a tax rate of three and one-third cents (\$0.03 1/3); allowed under section 1.5 or 1.9 of this chapter for that county.~~

SECTION 16. IC 12-29-2-13, AS AMENDED BY P.L.215-2001, SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 13. (a) This section applies to a **Lake County, having a population of not less than four hundred thousand (400,000) but not more than seven hundred thousand (700,000):**

(b) In addition to any other appropriation under this article, a county annually may fund each center serving the county from the county's general fund in an amount not exceeding the following:

(1) For 2004, the amount that would be raised by a tax rate of one cent (\$0.01) on each one hundred dollars (\$100) of taxable property within the county in 2002.

(2) For 2005 and each year thereafter, the result equal to:
(A) the maximum amount determined under this section for the calendar year immediately preceding the ensuing

calendar year; multiplied by

(B) the product of seven tenths (0.7) multiplied by the county's assessed value growth quotient for the ensuing calendar year, as determined under IC 6-1.1-18.5-2.

(c) The receipts from the tax levied under this section shall be used for the leasing, purchasing, constructing, or operating of community residential facilities for the chronically mentally ill (as defined in IC 12-7-2-167).

(d) Money appropriated under this section must be:

(1) budgeted under IC 6-1.1-17; and

(2) included in the center's budget submitted to the division of mental health and addiction.

(e) Permission for a levy increase in excess of the levy limitations may be ordered under IC 6-1.1-18.5-15 only if the levy increase is approved by the division of mental health and addiction for a community mental health center.

SECTION 17. IC 12-29-2-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 17. (a) Bonds of a county may be issued for the construction and equipment or the improvement of a building to house a community mental health center.

(b) If services are provided to at least two (2) counties:

(1) bonds of the counties involved may be issued to pay the proportionate cost of the project in the proportion determined and agreed upon by the fiscal bodies of the counties involved; or

(2) bonds of one (1) county may be issued and the remaining counties may annually appropriate to the county issuing the bonds amounts to be applied to the payment of the bonds and interest on the bonds in the proportion agreed upon by the county fiscal bodies of the counties involved.

SECTION 18. IC 12-29-2-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 18. All general Indiana statutes relating to the following apply to the issuance of county bonds under this chapter:

(1) The filing of a petition requesting the issuance of bonds.

(2) The giving of notice of the following:

(A) The filing of the petition requesting the issuance of the bonds.

(B) The determination to issue bonds.

(C) A hearing on the appropriation of the proceeds of the bonds.

(3) The right of taxpayers to appear and be heard on the proposed appropriation.

(4) The approval of the appropriation by the department of local government finance.

(5) The right of taxpayers to remonstrate against the issuance of bonds.

SECTION 19. IC 12-29-2-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 19. If bonds are issued under this chapter:

(1) the building that is constructed, equipped, or improved with proceeds of the bonds is:

(A) the property of the county issuing the bonds; or

(B) the joint property of the counties involved, if the bonds are issued by at least two (2) counties; and

(2) the tax limitations in this chapter do not apply to the levy of taxes to pay the bonds and the interest on the bonds.

SECTION 20. IC 12-29-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 20. (a) On the first Monday in October, the county auditor shall certify to:

(1) the division of mental health and addiction, for a community mental health center; and

(2) the president of the board of directors of each community mental health center;

the amount of money that will be provided to the community mental health center under this chapter.

(b) The county payment to the community mental health center

shall be paid by the county treasurer to the treasurer of each community mental health center's board of directors in the following manner:

(1) One-half (½) of the county payment to the community mental health center shall be made on the second Monday in July.

(2) One-half (½) of the county payment to the community mental health center shall be made on the second Monday in December.

(c) A county making a payment under this subsection or from other county sources to a community mental health center that qualifies as a community mental health center disproportionate share provider under IC 12-15-16-1 shall certify that the payment represents expenditures eligible for financial participation under 42 U.S.C. 1396b(w)(6)(A) and 42 CFR 433.51. The office shall assist a county in making this certification.

(d) Payments by the county fiscal body:

(1) must be in the amounts:

(A) determined by section 1.6 of this chapter and sections 2 through 5 of this chapter; and

(B) authorized by sections 1.5, 1.9, and 13 of this chapter; and

(2) are in place of grants from agencies supported within the county solely by county tax money.

SECTION 21. IC 12-29-2-6 IS REPEALED [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:".

Delete page 3.

Page 4, delete lines 1 through 12.

Page 4, line 13, after "PASSAGE]" insert "(a) IC 12-29-1 and IC 12-29-2, as amended by this act, apply to property taxes first due and payable after December 31, 2003.

(b)".

Page 4, line 14, after "2004," insert "subject to subsections (c) and (d)".

Page 4, between lines 21 and 22, begin a new paragraph and insert:

(c) If the department of local government finance determines that compliance with this act would cause an unreasonable delay in the certification of budgets, tax rates, and tax levies in a county, the department of local government finance may certify budgets, tax rates, and tax levies for the county under IC 6-1.1-18-12, IC 12-29-1, and IC 12-29-2 as if this act had not been passed. However, if the department of local government finance takes this action, the following apply:

(1) If this act provides a greater appropriation and levy for a county than would have been provided under the previously enacted law, the affected county and the department of local government finance shall provide for an additional shortfall property tax levy and an additional budgeted amount in 2005 to replace the revenue lost in 2004 to community mental health centers as a result of certifying budgets, tax rates, and tax levies for the county under IC 6-1.1-18-12, IC 12-29-1, and IC 12-29-2 as if this act had not been passed.

(2) If this act provides a smaller appropriation and levy for a county than would have been provided under the previously enacted law, the department of local government finance shall issue a supplemental order that reduces the amount of the county's 2004 budget to reflect this act and order that any excess levy collected from property taxes first due and payable in 2004 be placed in the county's levy excess fund established under IC 6-1.1-18.5-17 for the purpose of reducing property taxes in the subsequent year.

(d) The amount of a shortfall levy under subsection (c)(1) shall be treated as an addition to the amount allowed in 2005 under IC 12-29-2, as amended by this act. The ad valorem property tax levy limits imposed by IC 12-29-2, as amended by this act, do not apply to ad valorem property taxes imposed under subsection (c)(1). For purposes of computing the ad valorem property tax levy limit imposed under IC 12-29-2, as amended by this act, for property taxes first due and payable after 2005, the ad valorem property tax levy imposed under IC 12-29-2, as added by this act, does not include that part of the levy imposed under subsection (c)(1)".

Renumber all SECTIONS consecutively.
(Reference is to HB 1296 as printed February 2, 2004.)

KLINKER

Motion prevailed.

HOUSE MOTION
(Amendment 1296-3)

Mr. Speaker: I move that House Bill 1296 be amended to read as follows:

Page 4, between lines 12 and 13, begin a new paragraph and insert:
"SECTION 2. IC 12-26-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does not apply to the commitment of an individual if the individual has previously been committed under IC 12-26-6.

(b) A proceeding for the commitment of an individual who appears to be suffering from a chronic mental illness may be begun by filing with a court having jurisdiction a written petition by any of the following:

- (1) A health officer.
- (2) A police officer.
- (3) A friend of the individual.
- (4) A relative of the individual.
- (5) The spouse of the individual.
- (6) A guardian of the individual.
- (7) The superintendent of a facility where the individual is present.
- (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- (9) A prosecuting attorney or the attorney for a county office if civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.

(10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.

SECTION 3. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of his defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

- (1) psychiatrists; or
- (2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. ~~or physicians;~~

At least one (1) of ~~whom the individuals appointed under this subsection~~ must be a psychiatrist. ~~who~~ However, neither may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution. The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:~~

- (1) location where the defendant currently resides; or
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter

into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 4. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense:

- (1) ~~the division of mental health and addiction, through the superintendent of the appropriate psychiatric institution, superintendent of the state institution (as defined in IC 12-7-2-184); or~~
- (2) **if the division of mental health and addiction entered into a contract for the provision of competency restoration services, the director or medical director of the third party contractor;**

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court ~~may~~ shall enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

SECTION 5. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

- (1) ~~a defendant's admittance to a psychiatric institution, the superintendent of the psychiatric institution admission to a state institution (as defined in IC 12-7-2-184); or~~
- (2) **the initiation of competency restoration services to a defendant by a third party contractor;**

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, ~~the division of mental health and addiction state institution (as defined in IC 12-7-2-184) or the third party contractor~~ shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, ~~the division of mental health and addiction state institution (as defined in IC 12-7-2-184) or third party contractor~~ shall retain the defendant:

- (1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or
- (2) for six (6) months from the date of the:
 - (A) ~~defendant's admittance to a state institution (as defined in IC 12-7-2-184); or~~
 - (B) **initiation of competency restoration services by a third party contractor;**

whichever first occurs.

SECTION 6. IC 35-36-3-4, AS AMENDED BY P.L.215-2001, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found under section 3 of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

- (1) ~~defendant's admittance to a psychiatric institution, the division of mental health and addiction admission to a state institution (as defined in IC 12-7-2-184); or~~
- (2) **initiation of competency restoration services by a third party contractor;**

the state institution (as defined in IC 12-7-2-184) or the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency

restoration services by a third party, shall institute regular commitment proceedings under IC 12-26."

Renumber all SECTIONS consecutively.

(Reference is to HB 1296 as printed February 2, 2004.)

KLINKER

Motion prevailed.

HOUSE MOTION
(Amendment 1296-1)

Mr. Speaker: I move that House Bill 1296 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-1.1-17-20, AS AMENDED BY P.L.1-2004, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 20. (a) This section applies:

(1) to each governing body of a taxing unit that is not comprised of a majority of officials who are elected to serve on the governing body; and

(2) if the proposed property tax levy:

(A) for the taxing unit **(other than a public library)** for the ensuing calendar year is more than five percent (5%) greater than the property tax levy for the taxing unit for the current calendar year; or

(B) **for the operating budget of a public library for the ensuing calendar year is more than five percent (5%) greater than the property tax levy for the operating budget of the public library for the current calendar year.**

(b) As used in this section, "taxing unit" has the meaning set forth in IC 6-1.1-21, except that the term does not include a school corporation.

(c) **Subject to subsection (f), if:**

(1) the assessed valuation of a taxing unit is entirely contained within a city or town; or

(2) the assessed valuation of a taxing unit is not entirely contained within a city or town but the taxing unit was originally established by the city or town;

the governing body shall submit its proposed budget and property tax levy to the city or town fiscal body. The proposed budget and levy shall be submitted at least fourteen (14) days before the city or town fiscal body is required to hold budget approval hearings under this chapter.

(d) **Subject to subsection (f), if subsection (c) does not apply,** the governing body of the taxing unit shall submit its proposed budget and property tax levy to the county fiscal body in the county where the taxing unit has the most assessed valuation. The proposed budget and levy shall be submitted at least fourteen (14) days before the county fiscal body is required to hold budget approval hearings under this chapter.

(e) The fiscal body of the city, town, or county (whichever applies) shall review each budget and proposed tax levy and adopt a final budget and tax levy for the taxing unit. The fiscal body may reduce or modify but not increase the proposed budget or tax levy.

(f) **The governing body of a public library described in subsection (a)(2)(B) is required to submit only its:**

(1) **proposed operating budget; and**

(2) **proposed property tax levy for its operating budget; under subsection (c) or (d). A fiscal body's review under subsection (e) is limited to the proposed operating budget of the public library and the proposed property tax levy for the library's operating budget."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1296 as printed February 2, 2004.)

FRENZ

Upon request of Representatives Espich and Bosma, the Speaker ordered the roll of the House to be called. Roll Call 94: yeas 37, nays 48. Motion failed. The bill was ordered engrossed.

The Speaker yielded the gavel to the Speaker Pro Tempore, Representative Dobis.

House Bill 1018

Representative Grubb called down House Bill 1018 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1018-1)

Mr. Speaker: I move that House Bill 1018 be amended to read as follows:

Page 2, line 17, after "tissue" insert ",".

Page 2, line 18, after "tissue" insert ",".

Page 2, between lines 31 and 32, begin a new paragraph and insert:

"(h) This subsection applies if the Indiana Donation Alliance Foundation:

(1) loses its status as an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; or

(2) ceases its affiliation with at least three (3) of the following organizations:

(A) American Red Cross Tissue Service.

(B) Children's Organ Transplant Association.

(C) Community Tissue Services.

(D) Indiana Lions Eye & Tissue Transplant Bank.

(E) Indiana Organ Procurement Organization.

(F) St. Joseph Hospital Tissue Bank and Indiana Cardiac Retrieval.

The Indiana Donation Alliance Foundation shall report in an electronic format under IC 5-14-6 to the chairpersons of the senate standing committee, as determined by the president pro tempore of the senate, and the house standing committee, as determined by the speaker of the house of representatives, that have subject matter jurisdiction over health issues. The chairpersons shall review the report and recommend to the state department whether to continue distributions under subsection (d)."

Page 2, line 32, reset in roman "(i)".

Page 2, line 32, delete "(h)".

(Reference is to HB 1018 as printed January 30, 2004.)

GRUBB

Motion prevailed. The bill was ordered engrossed.

House Bill 1157

Representative Fry called down House Bill 1157 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1157-16)

Mr. Speaker: I move that House Bill 1157 be amended to read as follows:

Page 1, line 12, delete "law," and insert **"provision of this chapter to the contrary, and notwithstanding IC 20-5-2-2(14),"**

Page 13, delete lines 21 through 27.

Renumber all SECTIONS consecutively.

(Reference is to HB 1157 as printed January 30, 2004.)

FRY

Motion prevailed.

HOUSE MOTION
(Amendment 1157-17)

Mr. Speaker: I move that House Bill 1157 be amended to read as follows:

Page 6, line 41, delete ";" and insert **"under IC 20-5-2.7,"**

Page 7, line 7, delete ";" and insert **"under IC 20-5-2.7,"**

Page 9, line 36, after "is" insert **"subject to regulation by the department of insurance created by IC 27-1-1-1."**

Page 9, delete lines 37 through 40.

Page 10, delete line 12.

Page 10, line 17, delete "." and insert **"; and**

(3) approved by the commissioner."

Page 11, line 4, delete ";" and insert **"including a provision specifying that an existing member may not leave the cooperative program unless the member's departure is specifically approved by the commissioner;"**

Page 11, between lines 7 and 8, begin a new paragraph and insert:

"(c) The following must be submitted to and approved by the commissioner before a cooperative program may commence operations:

- (1) The interlocal agreement described in subsection (a).
- (2) The bylaws described in subsection (b).
- (3) The form and purchase by the cooperative program of any insurance contracts, including contracts for aggregate insurance coverage and specific insurance coverage.
- (4) An accounting, based on generally accepted actuarial standards, of sufficient reserves committed before commencement of operations to pay obligations of the cooperative program.
- (5) Each coverage document form to be issued by the cooperative program.
- (6) Any other information determined necessary by the commissioner.

(d) If the commissioner does not disapprove the information submitted under subsection (c) earlier than thirty (30) days after the information is submitted, the information is considered approved."

Page 12, line 11, after "year" insert "or less, as determined by the commissioner,".

Page 12, line 18, delete "one (1) year" and insert "the period determined by the commissioner under subsection (c)".

Page 12, between lines 22 and 23, begin a new paragraph and insert:

"(e) A cooperative program is subject to IC 27-9.

(f) A cooperative program shall be considered a member insurer for purposes of IC 27-6-8."

Page 12, line 39, after "judgment." insert "This section does not prohibit the commissioner from obtaining the information described in this section."

Page 13, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 5. IC 27-6-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) This chapter applies to all kinds of direct insurance except:

- (1) life, annuity, health, or disability insurance;
- (2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (3) fidelity or surety bonds, or any other bonding obligations;
- (4) credit insurance, vendors' single interest insurance, or collateral protection insurance or similar insurance with the primary purpose of protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) warranty or service contract insurance;
- (6) title insurance;
- (7) ocean marine insurance;
- (8) a transaction between a person or an affiliate of a person and an insurer or an affiliate of an insurer that involves the transfer of investment or credit risk without a transfer of insurance risk;
- (9) insurance provided by or guaranteed by a government entity; and
- (10) insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound.

(b) This chapter applies to coverage provided under a cooperative program established under IC 20-5-2.7. For purposes of this chapter, a cooperative program is considered to be a member insurer.

SECTION 6. IC 27-9-1-1, AS AMENDED BY P.L.5-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Proceedings under this article apply to the following:

- (1) All insurers who are doing, or who have done, insurance business in Indiana, and against whom claims arising from that business may exist.
- (2) All insurers who purport to do insurance business in Indiana.
- (3) All insurers who have insureds resident in Indiana.
- (4) All other persons organized or in the process of organizing with the intent to do an insurance business in Indiana.
- (5) All nonprofit service plans, fraternal benefit societies, and beneficial societies.

(6) All title insurance companies.

(7) All health maintenance organizations under IC 27-13.

(8) All multiple employer welfare arrangements under IC 27-1-34.

(9) All limited service health maintenance organizations under IC 27-13-34.

(10) All mutual insurance holding companies under IC 27-14.

(11) All cooperative programs established under IC 20-5-2.7."

Renumber all SECTIONS consecutively.

(Reference is to HB 1157 as printed January 30, 2004.)

FRY

Motion prevailed.

HOUSE MOTION (Amendment 1157-18)

Mr. Speaker: I move that House Bill 1157 be amended to read as follows:

Page 2, line 37, delete "cost of" and insert "premium for".

Page 2, line 39, delete "cost of" and insert "premium for".

Page 2, line 39, after "coverage." insert "The administrator of the state employee health plan described in subsection (b)(1) shall not pay any part of the administrative cost or other costs of the coverage."

(Reference is to HB 1157 as printed January 30, 2004.)

FRY

Motion prevailed.

HOUSE MOTION (Amendment 1157-10)

Mr. Speaker: I move that House Bill 1157 be amended to read as follows:

Page 5, line 9, before "supervisors" insert "(who are not required to hold a license under IC 20-6.1-3),".

Page 12, after line 41, begin a new paragraph and insert:

"SECTION 4. IC 20-6.1-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. ~~Definition.~~ ~~Teacher~~": As used in this article, the term "teacher" means the following:

(1) A professional person whose position in the school corporation requires certain teacher training preparations and licensing. The term includes, but is not limited to, any ~~superintendent~~, supervisor, principal, attendance officer, teacher, or librarian.

(2) A superintendent who holds a license under IC 20-6.1-3.

SECTION 5. IC 20-6.1-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. ~~Superintendent Contracts~~. Each contract entered into by a governing body and its superintendent is subject to the following conditions:

(1) If the superintendent holds a license under IC 20-6.1-3, the basic contract is in the form of the regular teacher's contract.

(2) The contract is for a term of at least thirty-six (36) months.

(3) The contract may be altered or rescinded for a new one at any time by mutual consent of the governing body and the superintendent. This consent must be in writing and must be expressed in a manner not inconsistent with sections 18 through 20 of this chapter.

(4) If the superintendent holds a license under IC 20-6.1-3, the rights of a the superintendent as a teacher under any other law are not affected."

SECTION 6. IC 20-2-5-1 IS REPEALED [EFFECTIVE JULY 1, 2004].

Renumber all SECTIONS consecutively.

(Reference is to HB 1157 as printed January 30, 2004.)

TURNER

Representative Fry rose to a point of order, citing Rule 80, stating that the motion was not germane to the bill. The Chair ruled the point was well taken and the motion was out of order.

APPEAL OF THE RULING OF THE CHAIR

Mr. Speaker: We hereby appeal the ruling of the Chair that Representative Turner's amendment (1157-10) is not germane to the bill.

Rule 80 provides that no motion or proposition on a subject not germane to that under consideration shall be admitted under color of an amendment. Amendment 10 to House Bill 1157 concerns school corporation superintendents and is germane to the bill, which concerns school corporations.

TURNER
WHETSTONE

The Speaker Pro Tempore yielded the gavel to the Deputy Speaker Pro Tempore, Representative Harris.

The question was, Shall the ruling of the Chair be sustained? Roll Call 95: yeas 48, nays 48. The ruling of the Chair was sustained.

The Deputy Speaker Pro Tempore yielded the gavel to the Speaker Pro Tempore.

There being no further amendments, the bill was ordered engrossed.

House Bill 1194

Representative Avery called down House Bill 1194 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1194-1)

Mr. Speaker: I move that House Bill 1194 be amended to read as follows:

Page 2, line 13, after "family" delete "of" and insert "**and**".

Page 3, between lines 27 and 28, begin a new paragraph and insert: "SECTION 5. IC 31-33-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The local child protection service:

(1) must have sufficient qualified and trained staff to fulfill the purpose of this article; ~~and~~

(2) must be organized to maximize the continuity of responsibility, care, and service of individual caseworkers toward individual children and families; ~~and~~

(3) **must provide training, for each staff person who is involved in the investigation of child abuse or neglect or who is involved in the provision of treatment services under IC 31-33-12 or IC 31-33-13 in the duty of the staff person, to recognize and attempt to uphold the:**

(A) **statutory rights of a child and any member of a child's family, including a child's guardian or custodian, who is the subject of an investigation of child abuse or neglect; and**

(B) **right of a child and any member of a child's family, including a child's guardian or custodian, who is the subject of an investigation of child abuse or neglect to be protected against unreasonable search and seizure under:**

(i) **the Fourth Amendment to the Constitution of the United States; and**

(ii) **Article 1, Section 11 of the Constitution of the State of Indiana.**

SECTION 6. IC 31-33-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) When a law enforcement agency receives an initial report under IC 31-33-5-4 that a child may be a victim of child abuse or neglect, the law enforcement agency shall:

(1) immediately communicate the report to the local child protection service, whether or not the law enforcement agency has reason to believe there exists an imminent danger to the child's health or welfare; and

(2) conduct an immediate, onsite investigation of the report along with the local child protection service whenever the law enforcement agency has reason to believe that an offense has been committed.

(b) **A law enforcement officer or a member of a local child protection service conducting an onsite investigation shall, upon the initiation of the onsite investigation, inform each person who is the subject of the investigation of the nature of the complaint. The law enforcement officer or the member of the local child**

protection service is only required to provide a person who is the subject of an investigation with information the person is entitled to receive under IC 31-33-18-2.

(c) In all cases, the law enforcement agency shall forward any information, including copies of investigation reports, on incidents of cases in which a child may be a victim of child abuse or neglect, whether or not obtained under this article, to:

(1) the local child protection agency; and

(2) the juvenile court under IC 31-34-7.

SECTION 7. IC 31-33-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) The local child protection service shall initiate an immediate and appropriately thorough child protection investigation of every report of known or suspected child abuse or neglect the local child protection service receives, whether in accordance with this article or otherwise.

(b) Subject to subsections (d) and (e), if the report alleges a child may be a victim of child abuse, the investigation shall be initiated immediately, but not later than twenty-four (24) hours after receipt of the report.

(c) Subject to subsections (d) and (e), if reports of child neglect are received, the investigation shall be initiated within a reasonably prompt time, but not later than five (5) days, with the primary consideration being the well-being of the child who is the subject of the report.

(d) If the immediate safety or well-being of a child appears to be endangered or the facts otherwise warrant, the investigation shall be initiated regardless of the time of day.

(e) If the child protection service has reason to believe that the child is in imminent danger of serious bodily harm, the child protection service shall initiate within one (1) hour an immediate, onsite investigation.

(f) A member of a local child protection service conducting an onsite investigation shall, upon the initiation of the onsite investigation, inform each person who is the subject of the investigation of the nature of the complaint. The member of the local child protection service is only required to provide a person who is the subject of an investigation with information the person is entitled to receive under IC 31-33-18-2.

SECTION 8. IC 31-33-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Upon the receipt of each report under this chapter of known or suspected child abuse, the local child protection service shall contact the law enforcement agency in the appropriate jurisdiction.

(b) The law enforcement agency, with the local child protection service, shall conduct an immediate onsite investigation of the report if the law enforcement agency has reason to believe that an offense has been committed. The law enforcement agency shall investigate the alleged child abuse or neglect under this chapter in the same manner that the law enforcement agency conducts any other criminal investigation.

(c) A law enforcement officer or a member of a local child protection service conducting an onsite investigation shall, upon the initiation of the onsite investigation, inform each person who is the subject of the investigation of the nature of the complaint. The law enforcement officer or the member of the local child protection service is only required to provide a person who is the subject of an investigation with information the person is entitled to receive under IC 31-33-18-2."

Page 14, line 13, after "family" delete "of" and insert "**and**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1194 as printed January 30, 2004.)

WELCH

Motion prevailed. The bill was ordered engrossed.

House Bill 1197

Representative Dickinson called down House Bill 1197 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1197-2)

Mr. Speaker: I move that House Bill 1197 be amended to read as follows:

Page 1, line 3, strike "under the following:" and insert **"involving the following offenses where the victim is a protected person under subsection (c)(1) or (c)(2):"**.

Page 1, line 5, reset in roman "upon a child (IC 35-42-2-1(2)(B))."

Page 1, line 5, delete "(IC 35-42-2-1)".

Page 1, line 7, delete "Theft (IC 35-43-4-2)".

Page 1, delete line 8.

Page 1, line 9, delete "(6)".

Page 1, run in lines 7 through 9.

Page 1, line 10, reset in roman "(5)".

Page 1, line 10, delete "(7)".

Page 1, line 11, reset in roman "(6)".

Page 1, line 11, delete "(8) Exploitation of a dependent or endangered adult".

Page 1, delete lines 12 through 13.

Page 1, line 14, delete "(10)".

Page 1, run in lines 11 through 14.

Page 1, line 15, reset in roman "(5)".

Page 1, line 15, delete "(9)".

Page 1, between lines 15 and 16, begin a new paragraph and insert:
"(b) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(3):"

(1) Exploitation of a dependent or endangered adult (IC 35-46-1-12).

(2) A sex crime (IC 35-42-4).

(3) Battery (IC 35-42-2-1).

(4) Kidnapping, confinement, or interference with custody (IC 35-42-3).

(5) Home improvement fraud (IC 35-42-6).

(6) Fraud (IC 35-43-5).

(7) Identity deception (IC 35-43-5-3.5).

(8) Theft (IC 35-43-4-2).

(9) Conversion (IC 35-43-4-3).

(10) Neglect of a dependent (IC 35-46-1-4)."

Page 1, line 16, delete "(b)" and insert "(c)".

Page 2, line 12, reset in roman ":",

Page 2, line 13, delete "at least sixty-five (65) years of age." and insert **"who is"**

(1) at least eighteen (18) years of age; and

(2) incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of:

(A) managing or directing the management of the individual's property; or

(B) providing or directing the provision of self-care."

Page 2, line 14, strike "(c)" and insert "(d)".

Page 2, line 18, after "(a)" insert **"or (b)"**.

Page 2, line 22, after "(a)" insert **"or (b)"**.

Page 2, line 22, strike "(d)" and insert **"(e)"**.

Page 2, line 23, strike "(d)" and insert **"(e)"**.

Page 2, line 23, strike "(c)" and insert **"(d)"**.

Page 2, line 24, after "(a)" insert **"or (b)"**.

Page 3, line 5, strike "(e)" and insert **"(f)"**.

Page 3, line 6, strike "(d)(2)(B)," and insert **"(e)(2)(B),"**.

Page 3, line 9, strike "(d)(1);" and insert **"(e)(1);"**.

Page 3, line 11, strike "(f)" and insert **"(g)"**.

Page 3, line 17, strike "(g)" and insert **"(h)"**.

Page 3, after line 27, begin a new paragraph and insert:

"(i) If a statement or videotape described in subsection (d) is admitted into evidence under this section, a defendant may introduce a:

(1) transcript; or

(2) videotape;

of the hearing held under subsection (e)(1) into evidence at trial."

(Reference is to HB 1197 as printed January 23, 2004.)

VAN HAAFTEN

Motion prevailed. The bill was ordered engrossed.

House Bill 1218

Representative Summers called down House Bill 1218 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1218-1)

Mr. Speaker: I move that House Bill 1218 be amended to read as follows:

Page 1, between lines 14 and 15, begin a new line block indented and insert:

"(6) Sanitary sewers."

Page 2, line 6, strike "six (6) months" and insert **"the number of months the person is in default"**.

Page 2, line 9, strike "following May 10 or November 10 after the notice is mailed." and insert **"date determined as follows:**

(A) If the person selected monthly installments under IC 36-9-37-8.5(a)(1), within sixty (60) days after the date the notice is mailed.

(B) If the person selected annual installments under IC 36-9-37-8.5(a)(2), within six (6) months after the date the notice is mailed."

(Reference is to HB 1218 as printed January 30, 2004.)

SUMMERS

Motion prevailed. The bill was ordered engrossed.

House Bill 1229

Representative Bardon called down House Bill 1229 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1229-7)

Mr. Speaker: I move that House Bill 1229 be amended to read as follows:

Page 14, line 18, delete "five" and insert **"six"**.

Page 14, line 18, delete "(5%)" and insert **"(6%)"**.

Page 15, line 16, delete "the total of the following:".

Page 15, line 17, delete "(1) Points" and insert **"points"**.

Run in lines 16 through 17.

Page 15, delete lines 19 through 21.

Page 15, line 23, delete "Not more than two (2) bona" and insert **"Bona"**.

(Reference is to HB 1229 as printed January 30, 2004.)

BURTON

Motion prevailed.

HOUSE MOTION (Amendment 1229-5)

Mr. Speaker: I move that House Bill 1229 be amended to read as follows:

Page 2, line 26, delete "implement this chapter." and insert **"the extent necessary to organize the unit."**

Page 2, line 27, delete "shall" and insert **"may"**.

Page 2, after line 42, begin a new line block indented and insert:

"(10) Local law enforcement agencies."

Page 3, delete lines 22 through 25.

Page 3, line 26, delete "10." and insert **"9."**

Page 3, line 30, delete "IC 24-9-8." and insert **"IC 24-9-9."**

Page 9, line 21, delete "IC 24-9-8." and insert **"IC 24-9-9."**

Page 12, line 15, delete "This" and insert **"Except for the provisions of IC 24-9-3-7(3), this"**.

Page 12, line 19, delete "saving" and insert **"savings"**.

Page 12, between line 28 and 29, begin a new line double block indented and insert:

"(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;"

Page 12, line 29, delete "(D)" and insert **"(E)"**.

Page 12, line 31, delete "(E)" and insert **"(F)"**.

Page 14, line 4, after "7." insert **"(a)"**.

Page 14, line 6, delete "person:" and insert **"person at the time of the transaction knowingly or intentionally:"**.

Page 14, line 7, delete "knowingly or intentionally".

Page 14, line 8, after ":", insert **"or"**.

Page 14, line 9, delete "knowingly or intentionally".

Page 14, line 10, delete "or" and insert **"."**.

Page 14, delete lines 11 through 15, begin a new paragraph and insert:

"(b) For purposes of this section, "knowingly" means having

actual knowledge at the time of the transaction."

Page 14, line 21, after "by a" delete ":".

Page 14, line 22, delete "(1)".

Page 14, run in lines 21 through 22.

Page 14, line 25, delete "(A)", begin a new line block indented and insert:

"(1)".

Page 14, line 27, delete "(B)", begin a new line block indented and insert:

"(2)".

Page 14, line 28, delete "dwelling; or" and insert "dwelling".

Page 14, delete lines 29 through 42.

Page 15, delete lines 1 through 14.

Page 15, line 15, delete "11." and insert "10".

Page 15, line 21, after "name." insert "As used in this subdivision, **"compensation" does not include a payment included in subdivision (1).**"

Page 15, line 23, delete "Not more than two (2) bona" and insert "Bona".

Page 15, between lines 25 and 26, begin a new line block indented and insert:

"(3) Reasonable fees paid to an affiliate of the creditor."

Sec. 11. "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity."

Page 16, line 12, after "not" insert "knowingly or intentionally".

Page 16, between lines 25 and 26, begin a new paragraph and insert:

"(c) Each mortgage or deed of trust securing a zero (0) interest rate or other subsidized low rate loan executed after January 1, 2005, must prominently display the following on the face of the instrument:

"This instrument secures a zero (0) interest rate or other subsidized low rate loan subject to IC 24-9-3-2."

(d) A creditor may reasonably rely on the presence or absence of the statement described in subsection (c) on the face of an instrument executed after January 1, 2005, as conclusive proof of the existence or nonexistence of a zero (0) interest rate or other subsidized low rate loan."

Page 16, line 41, after "6." insert "(a)".

Page 17, between lines 3 and 4, begin a new paragraph and insert:

"(b) For purposes of this section, "fee" does not include actual charges incurred by a creditor for express or priority delivery requested by the borrower of home loan documents to the borrower."

Page 17, line 4, delete "creditor" and insert "person".

Page 17, line 10, after "loan," insert "or".

Page 17, line 11, delete "when making" and insert "in connection with".

Page 17, line 11, delete "; or" and insert ".".

Page 17, delete lines 12 through 13, begin a new paragraph and insert:

"Sec. 8. A person, in seeking to enforce the person's rights under section 7(3) of this chapter, may not knowingly or intentionally intimidate, coerce, or harass another person."

Page 17, line 14, delete "8." and insert "9".

Page 17, between lines 41 and 42, begin a new line block indented and insert:

"(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as

defined in IC 24-9-2-8."

Page 17, line 42, delete "(5)" and insert "(7)".

Page 23, line 28, delete "the".

Page 23, line 29, delete "borrower" and insert **"a person who is a party to the home loan transaction that gave rise to the violation"**.

Page 23, line 30, delete "The" and insert **"A person"**.

Page 23, line 31, delete "borrower".

Page 23, line 37, delete "borrower" and insert **"person"**.

Page 23, line 41, delete "borrower" and insert **"person"**.

Page 24, line 4, delete "borrower's" and insert **"person's"**.

Page 24, line 7, delete "borrower" and insert **"person"**.

Page 24, line 9, delete "consumer." and insert **"person."**

Page 24, line 10, delete "A consumer" and insert **"Except as provided in subsection (e), a person"**.

Page 24, between lines 11 and 12, begin a new paragraph and insert:

"(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

(1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation."

Page 24, line 12, delete "(e)" and insert "(f)".

Page 24, line 13, delete "borrower" and insert **"person"**.

Page 24, line 16, delete "(f)" and insert "(g)".

Page 25, between lines 13 and 14, begin a new paragraph and insert:

"Chapter 7. State Power to Regulate Lending

Sec. 1. The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

Sec. 2. Political subdivisions may not:

(1) enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices; or

(2) impose reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

(A) are subject to the jurisdiction of the department of financial institutions;

(B) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(C) are chartered by the United States Congress to engage in secondary market mortgage transactions;

(D) are created by the Indiana housing finance authority; or

(E) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, originated, or purchased by persons referred to in clauses (A), (B), (C), or (D)."

Page 25, line 14, delete "7." and insert "8".

Page 25, delete lines 30 through 31.

Page 25, line 32, delete "(4)" and insert "(3)".

Page 25, line 35, delete "(5)" and insert "(4)".

Page 25, line 35, delete "fifteen" and insert "ten".

Page 25, line 36, delete "\$15,000" and insert **"(\$10,000)"**.

Page 26, line 3, delete "8." and insert "9".

Page 26, line 23, delete "IC 4-6-12-10" and insert **"IC 4-6-12-9."**

Page 28, line 17, delete "IC 24-9-8-4." and insert "**IC 24-9-9-3.**"

Page 29, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 13. [EFFECTIVE UPON PASSAGE] **Notwithstanding IC 24-9-3 and IC 24-9-4, both as added by this act, a person is not subject to a prohibition or requirement of IC 24-9-3 and IC 24-9-4, both as added by this act, before January 1, 2005.**"

Renumber all SECTIONS consecutively.

(Reference is to HB 1229 as printed January 30, 2004.)

BARDON

Motion prevailed. The bill was ordered engrossed.

House Bill 1239

Representative Cherry called down House Bill 1239 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1239-2)

Mr. Speaker: I move that House Bill 1239 be amended to read as follows:

Page 2, line 8, strike "The township assessor shall".

Page 2, strike line 9.

Page 2, line 10, strike "in the county."

Page 2, delete lines 14 through 17, begin a new paragraph and insert:

"(d) **After June 30, 2004, the sales disclosure form prescribed by the department of local government finance under section 5 of this chapter shall not include a telephone number or Social Security number of any transferor or transferee. If a sales disclosure form that is completed and signed after June 30, 2004, contains the telephone number or Social Security number of a transferor or transferee, the telephone number or Social Security number is confidential.**"

Page 3, delete lines 11 through 12.

(Reference is to HB 1239 as printed January 30, 2004.)

PIERCE

Motion prevailed. The bill was ordered engrossed.

House Bill 1244

Representative Mangus called down House Bill 1244 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1244-3)

Mr. Speaker: I move that House Bill 1244 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals and to make an appropriation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 15-4-10-12, AS AMENDED BY P.L.232-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) The Indiana corn marketing council is established. **The council is a public body corporate and politic, and though it is separate from the state, the exercise by the council of its powers constitutes an essential governmental function. The council may sue and be sued and plead and be impleaded.**

(b) The council shall be composed of fifteen (15) members. The elected members from districts listed under section 16(a) of this chapter must be:

(1) registered as voters in Indiana;

(2) at least eighteen (18) years of age; and

(3) producers.

(c) Each elected member of the council must reside in the district identified in section 16(a) of this chapter from which the member was elected.

(d) Each member of the council is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and

approved by the state budget agency. However, council members are not entitled to any salary or per diem.

SECTION 2. IC 15-4-10-16, AS AMENDED BY P.L.232-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) One (1) council member shall be elected from each of the following districts:

DISTRICT 1. The counties of Lake, Newton, Jasper, Benton, Porter, LaPorte, Starke, White, and Pulaski.

DISTRICT 2. The counties of St. Joseph, Elkhart, Marshall, Kosciusko, Fulton, Carroll, Cass, Miami, and Wabash.

DISTRICT 3. The counties of LaGrange, Steuben, Noble, Dekalb, Whitley, Allen, Huntington, Wells, and Adams.

DISTRICT 4. The counties of Montgomery, Fountain, Warren, Tippecanoe, Vermillion, Parke, Putnam, Vigo, Clay, and Owen.

DISTRICT 5. The counties of Clinton, Boone, Tipton, Howard, Grant, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Rush, Bartholomew, and Decatur.

DISTRICT 6. The counties of Blackford, Jay, Delaware, Henry, Randolph, Wayne, Fayette, and Union.

DISTRICT 7. The counties of Sullivan, Greene, Knox, Daviess, Martin, Gibson, Pike, Dubois, Posey, Vanderburgh, Warrick, and Spencer.

DISTRICT 8. The counties of Monroe, Brown, Lawrence, Jackson, Orange, Washington, Perry, Crawford, Harrison, and Floyd.

DISTRICT 9. The counties of Franklin, Jennings, Jefferson, Ripley, Dearborn, Ohio, Clark, Switzerland, and Scott.

DISTRICT 10. All counties in Indiana.

(b) The dean of the school of agriculture at Purdue University or the dean's designee shall serve as an ex officio member of the council.

(c) The director shall appoint two (2) representatives of first purchaser organizations to serve as members of the council.

(d) The president pro tempore of the senate shall appoint one (1) member of the senate to serve as a member of the council. The speaker of the house of representatives shall appoint one (1) member of the house of representatives to serve as a member of the council.

The members appointed under this subsection are ex officio members of the council. These appointed members shall at all times be members of different political parties. Notwithstanding any other law, the members appointed under this section are entitled to receive the per diem of members of the general assembly for time spent in attendance at the meetings of the council. Per diem of these members shall be paid by the council upon approval of the director.

SECTION 3. IC 15-4-10-22, AS AMENDED BY P.L.232-2001, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 22. (a) The council shall do the following:

(1) Elect a chairman, vice chairman, secretary, treasurer, and other officers the council considers necessary.

(2) Employ personnel and contract for services that are necessary for the proper implementation of this chapter.

~~(3) Establish accounts in adequately protected financial institutions to receive, hold, and disburse funds accumulated under this chapter.~~

~~(4)~~ (3) Bond the treasurer and such other persons as necessary to ensure adequate protection of funds received and administered by the council.

~~(5)~~ (4) Authorize the expenditure of funds and the contracting of expenditures to conduct proper activities under this chapter.

~~(6)~~ (5) Annually establish priorities and prepare and approve a budget consistent with the estimated resources of the council and the scope of this chapter.

~~(7) Provide for an independent audit and make the results of the audit available to all interested persons.~~

~~(8)~~ (6) Annually publish at the same time as the results of the audit, an activities and financial report and present this report to the budget agency and the budget committee, and make this report available to all interested persons.

~~(9)~~ (7) Procure and evaluate data and information necessary for the proper implementation of this chapter.

~~(10)~~ (8) Formulate and execute assessment procedures and methods of collection.

~~(11)~~ (9) Receive and investigate, or cause to be investigated,

complaints and violations of this chapter and take necessary action within its authority.

~~(12)~~ **(10)** Take any other action necessary for the proper implementation of this chapter.

(b) ~~Eight~~ **(8)** ~~Seven~~ **(7)** affirmative votes are required for the council to take action."

Page 1, after line 17, begin a new paragraph and insert:

"SECTION 2. IC 15-4-10-24.5, IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 24.5. (a) The Indiana corn market development account is established within the state general fund for the purpose of market development. The account shall be administered by the council. The account consists of:**

- (1) assessments the council receives under this chapter;**
- (2) gifts; and**
- (3) grants.**

(b) The expenses of administering the account shall be paid from money in the account. After the account reaches an amount that exceeds five hundred thousand dollars (\$500,000) in a fiscal year, the council may annually take not more than ten percent (10%) of the balance for administrative expenses.

(c) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(d) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the account is continually appropriated to the council for purposes of this chapter."

Page 4, after line 24, begin a new paragraph and insert:

"SECTION 7. [EFFECTIVE JULY 1, 2004] **(a) The balance remaining in any account or fund created by or on behalf of the Indiana corn market development council on June 30, 2004, (including any account or fund under the control of a nonprofit corporation or organization), is transferred to the Indiana corn market development account established by IC 15-4-10-24.5, as added by this act.**

(b) This SECTION expires June 30, 2005."

Renumber all SECTIONS consecutively.

(Reference is to HB 1244 as printed January 30, 2004.)

GRUBB

Motion prevailed.

HOUSE MOTION (Amendment 1244-2)

Mr. Speaker: I move that House Bill 1244 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-4-29-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 0.5. As used in this chapter, "agritourism" means the act of visiting a working farm or any agricultural, horticultural, or agribusiness operation for purposes of enjoyment, education, or active involvement in the activities of the farm or operation.**

SECTION 2. IC 4-4-29-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 4. The council consists of the following members:**

- (1) The lieutenant governor.**
- (2) Two (2) members of the senate, who may not be members of the same political party, appointed by the president pro tempore of the senate for a term of one (1) year.**
- (3) Two (2) members of the house of representatives, who may not be members of the same political party, appointed by the speaker of the house for a term of one (1) year.**
- (4) Six (6) regional tourism industry representatives, appointed by the respective tourism regions for a term of one (1) year.**
- (5) ~~Eleven~~ **(11)** ~~Twelve~~ **(12)** representatives of the private sector, appointed by the governor for a term of two (2) years. One (1) representative must own or operate an agritourism business.**

(6) The executive director of the Indiana division of tourism.

(7) The executive director of the Indiana department of transportation.

(8) The executive director of the department of natural resources.

(9) A member appointed by the Indiana Hotel and Motel Association, for a term of one (1) year.

(10) A member appointed by the Restaurant and Hospitality Association of Indiana, for a term of one (1) year.

(11) A member appointed by the Association of Indiana Convention and Visitor Bureaus, for a term of one (1) year.

(12) A member appointed by the Council of Indiana Attractions, for a term of one (1) year.

(13) A member appointed by the Indiana Gaming Association, for a term of one (1) year.

(14) A member appointed by the Recreation Vehicle Indiana Council, for a term of one (1) year.

(15) A member appointed by the Indiana Bed and Breakfast Association, for a term of one (1) year.

(16) A member appointed by the Indiana State Festival Association, for a term of one (1) year.

(17) A member who lives in a rural community and is interested in agritourism, appointed by the Indiana rural development council, for a term of one (1) year.

SECTION 3. IC 4-4-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 6. The council shall do the following:**

(1) Assist in developing goals and objectives for the tourism division of the department, including the following:

(A) Development of Indiana's agricultural and horticultural base.

(B) Job creation and retention in rural Indiana.

(C) Development of agritourism opportunities to provide additional income for Indiana's agricultural and horticultural workers.

(D) Product development, including the creation of outlets for the sale of crafts, foods, and other items produced in Indiana.

(E) Preservation and development of historic rural resources in Indiana.

(F) Local, national, and international direct marketing to increase revenue and enhance the viability of agricultural, horticultural, and agribusiness operations in Indiana.

(G) Public education about the impact of agriculture and horticulture on a community's quality of life.

(H) Capital and business assistance for agricultural, horticultural, and agribusiness workers to increase the viability, sustainability, and growth of agritourism businesses and services in Indiana.

(2) Establish advisory groups to make recommendations to the department on tourism research, development, and marketing.

(3) Analyze the results and effectiveness of grants made by the department.

(4) Build commitment and unity among tourism industry groups.

(5) Create a forum for sharing talent, resources, and ideas regarding tourism.

(6) Encourage public and private participation necessary for the promotion of tourism.

(7) Promote agritourism in Indiana to national and international visitors.

(8) Sustain the viability and growth of the agritourism industry in Indiana.

(9) Establish and promote an Internet web site that is linked to the computer gateway administered by the intelnet commission under IC 5-21-2 and known as accessIndiana.

(10) Create regional agritourism development plans for the twelve (12) regional offices of the department.

(11) Coordinate efforts to educate the public about agritourism and Indiana's agricultural heritage and history.

(12) Provide information concerning funding opportunities, including grants, loans, and partnerships, to persons who

are interested in starting an agritourism business or who operate an agritourism business.

(13) Make recommendations to the department and the general assembly regarding any matter involving agritourism. Recommendations to the general assembly under this subdivision must be reported in an electronic format under IC 5-14-6.

(14) Generate economic vitality and tourism activity for Indiana.

(15) Position Indiana as the recognized agritourism center of the nation.

(16) Make recommendations to the department regarding any matter involving tourism."

Renumber all SECTIONS consecutively.

(Reference is to HB 1244 as printed January 30, 2004.)

KOCH

Motion prevailed. The bill was ordered engrossed.

House Bill 1365

Representative Cochran called down House Bill 1365 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1365-11)

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 3, line 30, after "(c)" insert "**This subsection applies only to retail transactions occurring after June 30, 2004.**".

Page 3, line 30, delete "not"

Page 3, line 30, delete "." and insert "**only if the retail merchant that paid the state gross retail or use tax liability assigned the right to the deduction in writing.**".

(Reference is to HB 1365 as printed January 27, 2004.)

MAYS

Motion prevailed.

HOUSE MOTION (Amendment 1365-2)

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 31, between lines 6 and 7, begin a new paragraph and insert: "SECTION 23. IC 6-8.1-3-16, AS AMENDED BY P.L.192-2002(ss), SECTION 141, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) The department shall prepare a list of all outstanding tax warrants for listed taxes each month. The list shall identify each taxpayer liable for a warrant by name, address, amount of tax, and either Social Security number or employer identification number. Unless the department renews the warrant, the department shall exclude from the list a warrant issued more than ten (10) years before the date of the list. The department shall certify a copy of the list to the bureau of motor vehicles.

(b) The department shall prescribe and furnish tax release forms for use by tax collecting officials. A tax collecting official who collects taxes in satisfaction of an outstanding warrant shall issue to the taxpayers named on the warrant a tax release stating that the tax has been paid. The department may also issue a tax release:

- (1) to a taxpayer who has made arrangements satisfactory to the department for the payment of the tax; or
 - (2) by action of the commissioner under IC 6-8.1-8-2(k).
- (c) The department may not issue or renew:
- (1) a certificate under IC 6-2.5-8;
 - (2) a license under IC 6-6-1.1 or IC 6-6-2.5; or
 - (3) a permit under IC 6-6-4.1;

to a taxpayer whose name appears on the most recent monthly warrant list, unless that taxpayer pays the tax, makes arrangements satisfactory to the department for the payment of the tax, or a release is issued under IC 6-8.1-8-2(k).

(d) The bureau of motor vehicles shall, before issuing the title to a motor vehicle under IC 9-17, determine whether the purchaser's or assignee's name is on the most recent monthly warrant list. If the purchaser's or assignee's name is on the list, the bureau shall enter as

a lien on the title the name of the state as the lienholder unless the bureau has received notice from the commissioner under IC 6-8.1-8-2(k). The tax lien on the title:

- (1) is subordinate to a perfected security interest (as defined and perfected in accordance with IC 26-1-9.1); and
- (2) shall otherwise be treated in the same manner as other title liens.

(e) The commissioner is the custodian of all titles for which the state is the sole lienholder under this section. Upon receipt of the title by the department, the commissioner shall notify the owner of the department's receipt of the title.

(f) The department shall reimburse the bureau of motor vehicles for all costs incurred in carrying out this section.

(g) Notwithstanding IC 6-8.1-8, a person who is authorized to collect taxes, interest, or penalties on behalf of the department under IC 6-3 or IC 6-3.5 may not, except as provided in subsection (h) or (i), receive a fee for collecting the taxes, interest, or penalties if:

- (1) the taxpayer pays the taxes, interest, or penalties as consideration for the release of a lien placed under subsection (d) on a motor vehicle title; or
- (2) the taxpayer has been denied a certificate or license under subsection (c) within sixty (60) days before the date the taxes, interest, or penalties are collected.

(h) In the case of a sheriff, subsection (g) does not apply if:

- (1) the sheriff collects the taxes, interest, or penalties within sixty (60) days after the date the sheriff receives the tax warrant; or
- (2) the sheriff collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(i) In the case of a person other than a sheriff:

- (1) subsection (g)(2) does not apply if the person collects the taxes, interests, or penalties within sixty (60) days after the date the commissioner employs the person to make the collection; and
- (2) subsection (g)(1) does not apply if the person collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(j) **IC 5-14-3-4, IC 6-8.1-7-1, and any other law exempting information from disclosure by the department does not apply to this subsection. From the list prepared under subsection (a), the department shall compile each month a list of the taxpayers subject to tax warrants that:**

- (1) were issued at least twelve (12) months before the date of the list; and
- (2) are for amounts that exceed one thousand dollars (\$1,000).

The list compiled under this subsection must identify each taxpayer liable for a warrant by name, address, and amount of tax. The department shall publish the list compiled under this subsection on accessIndiana (as defined in IC 5-21-1-1.5) and make the list available for public inspection and copying under IC 5-14-3. The department or an agent, employee, or officer of the department is immune from liability for the publication of information under this subsection.

(k) **The department may not publish a list under subsection (j) that identifies a particular taxpayer unless at least two (2) weeks before the publication of the list the department sends notice to the taxpayer stating that the taxpayer:**

- (1) is subject to a tax warrant that:
 - (A) was issued at least twelve (12) months before the date of the notice; and
 - (B) is for an amount that exceeds one thousand dollars (\$1,000); and
- (2) will be identified on a list to be published on accessIndiana unless a tax release is issued to the taxpayer under subsection (b).

SECTION 24. IC 34-30-2-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16.7. IC 6-8.1-3-16(j) (Concerning the department of state revenue for publishing a list of delinquent taxpayers)."

Renumber all SECTIONS consecutively.
(Reference is to HB 1365 as printed January 27, 2004.)

TURNER

Motion prevailed.

HOUSE MOTION
(Amendment 1365-4)

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 10, delete lines 13 through 15.
Page 11, delete lines 3 through 5.
Page 13, delete lines 4 through 6.
Page 22, delete lines 17 through 42.
Delete pages 23 through 24.
Page 25, delete lines 1 through 26.
Page 31, delete lines 37 through 42.
Page 32, delete line 1.
Page 32, line 2, delete "(g)" and insert "(f)".
Renumber all SECTIONS consecutively.
(Reference is to HB 1365 as printed January 27, 2004.)

TURNER

Upon request of Representatives Turner and Bosma, the Chair ordered the roll of the House to be called. Roll Call 96: yeas 52, nays 43. Motion prevailed.

HOUSE MOTION
(Amendment 1365-16)

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-1-5, AS AMENDED BY P.L.257-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), "gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges, **except as provided in subsection (b);**
- (5) installation charges, **except as provided in subsection (b);** or
- (6) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

- (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
- (3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
- (5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (6) **delivery charges that are separately stated on the invoice, bill of sale, or similar document given to the**

purchaser; or

(7) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing."

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

ESPICH

Upon request of Representatives Espich and Bosma, the Chair ordered the roll of the House to be called. Roll Call 97: yeas 79, nays 13. Motion prevailed.

HOUSE MOTION
(Amendment 1365-14)

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 3, between lines 6 and 7, begin a new paragraph and insert:
"SECTION 4. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 39. (a) As used in this section, "product" includes the following:

- (1) A pilot model, a process, a formula, an invention, a technique, a patent, or a similar property.
- (2) Property to be used in a taxpayer's trade or business.
- (3) Property to be held for sale, lease, or license, regardless of whether the property is ultimately placed in service, sold, leased, or licensed.

(b) As used in this section, "research and development" means laboratory or experimental activity to develop or improve a product or to discover information that would eliminate uncertainty concerning the development or improvement of a product.

(c) The term "research and development" does not include any of the following:

- (1) The ordinary testing or inspection of materials or products for quality control. The quality control testing to which this subdivision applies includes testing or inspection to determine whether particular units of materials or products conform to specified parameters. Quality control testing does not include testing to determine if the design of a product is appropriate.
- (2) Efficiency surveys.
- (3) Management studies.
- (4) Consumer surveys.
- (5) Advertising or promotions.
- (6) The acquisition of another's patent, model, production, process, or other product.
- (7) Research in connection with literary, historical, or similar projects.
- (8) Activities to ascertain the existence, location, extent, or quality of any deposit of oil, gas, ore, or other mineral.
- (9) Assembly, construction, or installation of property that is placed in service or held for sale, lease, or license.

(d) As used in this section, "uncertainty" means the unavailability to the taxpayer of information necessary to establish the capability or method for developing or improving the product or the appropriate design of the product.

(e) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct use in research and development."

Page 14, between lines 1 and 2, begin a new paragraph and insert:
"SECTION 9. IC 6-3-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 24. The term "sales" means all gross receipts of the taxpayer not allocated under ~~IC 6-3-2-2(g)~~ IC 6-3-2-2(e) through ~~IC 6-3-2-2(k)~~ IC 6-3-2-2(i), other than compensation (as defined in section 23 of this chapter)."

Page 22, between lines 16 and 17, begin a new paragraph and insert:

"(s) This section expires January 1, 2005.

SECTION 16. IC 6-3-2-2.1 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2.1. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, means and includes:

- (1) income from real or tangible personal property located in Indiana;
- (2) income from doing business in Indiana;
- (3) income from a trade or profession conducted in Indiana;
- (4) compensation for labor or services rendered within Indiana;
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter; and
- (6) any business income, regardless of whether it is described in this subsection.

In the case of nonbusiness income described in subsection (e), only so much of such income as is allocated to Indiana under subsections (f) through (i) shall be considered to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to Indiana under subsection (b) shall be considered to be derived from sources within Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter), only the part of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (p) is considered derived from sources within Indiana.

(b) Except as provided in subsection (j) and subject to subsection (m), if business income of a corporation or a nonresident person is derived from sources within Indiana and from sources outside Indiana, then the business income derived from sources within Indiana shall be determined by multiplying the business income derived from sources both within and outside Indiana by the sales factor.

(c) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in Indiana during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in Indiana if:

- (1) the property is delivered or shipped to a purchaser, other than the United States government, within Indiana, regardless of the f.o.b. point or other conditions of the sale; or
- (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in Indiana and:
 - (A) the purchaser is the United States government; or
 - (B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(d) Sales, other than receipts from intangible property covered by subsection (c) and sales of tangible personal property, are in Indiana if:

- (1) the income-producing activity is performed in Indiana; or
- (2) the income-producing activity is performed both within and outside Indiana and a greater proportion of the

income-producing activity is performed in Indiana than in any other state, based on costs of performance.

(e) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (f) through (i).

(f)(1) Net rents and royalties from real property located in Indiana are allocable to Indiana.

(2) Net rents and royalties from tangible personal property are allocated to Indiana:

- (i) if and to the extent that the property is utilized in Indiana; or
- (ii) in their entirety if the taxpayer's commercial domicile is in Indiana and the taxpayer is not organized under the laws of or taxable in the state in which the property is used.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is used in the state in which the property was located at the time the rental or royalty payer obtained possession.

(g)(1) Capital gains and losses from sales of real property located in Indiana are allocable to Indiana.

(2) Capital gains and losses from sales of tangible personal property are allocable to Indiana if:

- (A) the property had a situs in Indiana at the time of the sale; or
- (B) the taxpayer's commercial domicile is in Indiana and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to Indiana if the taxpayer's commercial domicile is in Indiana.

(h) Interest and dividends are allocable to Indiana if the taxpayer's commercial domicile is in Indiana.

(i)(1) Patent and copyright royalties are allocable to Indiana:

- (A) if and to the extent that the patent or copyright is utilized by the taxpayer in Indiana; or
- (B) if and to the extent that the patent or copyright is used by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Indiana.

(2) A patent is used in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is used in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is used in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of use, the copyright is used in the state in which the taxpayer's commercial domicile is located.

(j) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the inclusion of one (1) or more additional factors that will fairly represent the taxpayer's income derived from sources within Indiana; or
- (3) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(k) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within Indiana by various taxpayers.

(l) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(m) Notwithstanding subsections (j) and (k), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(n) Notwithstanding subsections (j) and (k), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (m)(1) or (m)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (j) and (k).

(o) Notwithstanding subsections (m) and (n), one (1) or more taxpayers may petition the department under subsection (j) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(p) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

- (1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and
- (2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

SECTION 17. IC 6-3-2-2.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2.4. (a) For purposes of section 2(1) of this chapter, a corporation is a foreign operating corporation for a particular taxable year if it has eighty percent (80%) or more of its total business activity occurring outside the United States during the taxable year.

(b) For purposes of determining the amount of a corporation's business activity that occurs within the United States, the department shall determine the sum of that corporation's United States property factor and its United States payroll factor and divide that sum by two (2). If the quotient exceeds two-tenths (0.2), then less than eighty percent (80%) of the corporation's business shall be considered to have occurred outside the United States. If the quotient equals or is less than two-tenths (0.2), then eighty percent (80%) or more of the corporation's business shall be considered to have occurred outside the United States. If a corporation's United States property factor or its United States payroll factor has a denominator of zero (0), then the sum of the two (2) factors shall be divided by one (1) and not by two (2).

(c) The United States property factor of a corporation is a fraction. The numerator of the fraction is the average value of the corporation's real and tangible personal property owned or rented and used in the United States during the taxable year, and the denominator of the fraction is the average value of all the corporation's real and tangible personal property owned or rented and used anywhere in the world during the taxable year. Property owned by the corporation shall be valued at its original cost. Property rented by the corporation shall be valued at eight (8) times the net annual rental rate. The corporation's net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals. The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the corporation's property.

(d) The United States payroll factor of a corporation is a fraction. The numerator of the fraction is the total compensation to individuals paid in the United States during the taxable year by the corporation, and the denominator of the fraction is the total compensation to individuals paid anywhere in the world during the taxable year by the corporation. Compensation to an individual is paid in the United States if:

- (1) the individual's service is performed entirely within the United States;
- (2) the individual's service is performed both within and outside the United States, but the service performed outside the United States is incidental to the individual's service within the United States; or
- (3) the individual is a resident of the United States, some of the service is performed in the United States, and:

- (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the United States; or
- (B) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is not in a jurisdiction that is outside the United States and that is where some part of the service is performed.

SECTION 18. IC 6-3-2-2.6, AS AMENDED BY P.L.192-2002(ss), SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person, for a particular taxable year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, derived from sources within Indiana is the remainder determined under STEP FOUR of the following formula:

STEP ONE: Determine, in the manner prescribed in section 2 or 2.1 of this chapter, the taxpayer's adjusted gross income, for the taxable year, derived from sources within Indiana, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.

STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5, and that are derived from sources within Indiana.

STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.

STEP FOUR: Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.

(b) For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of subsection (a), the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's income derived from sources within Indiana is determined, under section 2 or 2.1 of this

chapter, for the same taxable year during which each loss was incurred. Also, for purposes of STEP TWO of subsection (a), the following procedures apply:

- (1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.
- (2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.
- (3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.
- (4) A net operating loss under this section shall be considered even though in the year the taxpayer incurred the loss the taxpayer was not subject to the tax imposed under section 1 of this chapter because the taxpayer was:
 - (A) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or
 - (B) an insurance company subject to tax under Section 831 of the Internal Revenue Code."

Page 25, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 21. IC 6-3-3-10, AS AMENDED BY P.L.269-2003, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1 ,2005]: Sec. 10. (a) As used in this section:

"Base period wages" means the following:

- (1) In the case of a taxpayer other than a pass through entity, wages paid or payable by a taxpayer to its employees during the year that ends on the last day of the month that immediately precedes the month in which an enterprise zone is established, to the extent that the wages would have been qualified wages if the enterprise zone had been in effect for that year. If the taxpayer did not engage in an active trade or business during that year in the area that is later designated as an enterprise zone, then the base period wages equal zero (0). If the taxpayer engaged in an active trade or business during only part of that year in an area that is later designated as an enterprise zone, then the department shall determine the amount of base period wages.
- (2) In the case of a taxpayer that is a pass through entity, base period wages equal zero (0).

"Enterprise zone" means an enterprise zone created under IC 4-4-6.1.

"Enterprise zone adjusted gross income" means adjusted gross income of a taxpayer that is derived from sources within an enterprise zone. Sources of adjusted gross income shall be determined with respect to an enterprise zone, to the extent possible, in the same manner that sources of adjusted gross income are determined with respect to the state of Indiana under ~~IC 6-3-2-2~~ IC 6-3-2-2.1.

"Enterprise zone gross income" means gross income of a taxpayer that is derived from sources within an enterprise zone.

"Enterprise zone insurance premiums" means insurance premiums derived from sources within an enterprise zone.

"Monthly base period wages" means base period wages divided by twelve (12).

"Pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) trust;
- (4) limited liability company; or
- (5) limited liability partnership.

"Qualified employee" means an individual who is employed by a taxpayer and who:

- (1) has his principal place of residence in the enterprise zone in which he is employed;
- (2) performs services for the taxpayer, ninety percent (90%) of which are directly related to the conduct of the taxpayer's trade or business that is located in an enterprise zone;
- (3) performs at least fifty percent (50%) of his services for the taxpayer during the taxable year in the enterprise zone; and
- (4) in the case of an individual who is employed by a taxpayer that is a pass through entity, was first employed by the taxpayer

after December 31, 1998.

"Qualified increased employment expenditures" means the following:

- (1) For a taxpayer's taxable year other than his taxable year in which the enterprise zone is established, the amount by which qualified wages paid or payable by the taxpayer during the taxable year to qualified employees exceeds the taxpayer's base period wages.
- (2) For the taxpayer's taxable year in which the enterprise zone is established, the amount by which qualified wages paid or payable by the taxpayer during all of the full calendar months in the taxpayer's taxable year that succeed the date on which the enterprise zone was established exceed the taxpayer's monthly base period wages multiplied by that same number of full calendar months.

"Qualified state tax liability" means a taxpayer's total income tax liability incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax) with respect to enterprise zone adjusted gross income;
- (2) IC 27-1-18-2 (insurance premiums tax) with respect to enterprise zone insurance premiums; and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this section.

"Qualified wages" means the wages paid or payable to qualified employees during a taxable year.

"Taxpayer" includes a pass through entity.

(b) A taxpayer is entitled to a credit against the taxpayer's qualified state tax liability for a taxable year in the amount of the lesser of:

- (1) the product of ten percent (10%) multiplied by the qualified increased employment expenditures of the taxpayer for the taxable year; or
- (2) one thousand five hundred dollars (\$1,500) multiplied by the number of qualified employees employed by the taxpayer during the taxable year.

(c) The amount of the credit provided by this section that a taxpayer uses during a particular taxable year may not exceed the taxpayer's qualified state tax liability for the taxable year. If the credit provided by this section exceeds the amount of that tax liability for the taxable year it is first claimed, then the excess may be carried back to preceding taxable years or carried over to succeeding taxable years and used as a credit against the taxpayer's qualified state tax liability for those taxable years. Each time that the credit is carried back to a preceding taxable year or carried over to a succeeding taxable year, the amount of the carryover is reduced by the amount used as a credit for that taxable year. Except as provided in subsection (e), the credit provided by this section may be carried forward and applied in the ten (10) taxable years that succeed the taxable year in which the credit accrues. The credit provided by this section may be carried back and applied in the three (3) taxable years that precede the taxable year in which the credit accrues.

(d) A credit earned by a taxpayer in a particular taxable year shall be applied against the taxpayer's qualified state tax liability for that taxable year before any credit carryover or carryback is applied against that liability under subsection (c).

(e) Notwithstanding subsection (c), if a credit under this section results from wages paid in a particular enterprise zone, and if that enterprise zone terminates in a taxable year that succeeds the last taxable year in which a taxpayer is entitled to use the credit carryover that results from those wages under subsection (c), then the taxpayer may use the credit carryover for any taxable year up to and including the taxable year in which the enterprise zone terminates.

(f) A taxpayer is not entitled to a refund of any unused credit.

(g) A taxpayer that:

- (1) does not own, rent, or lease real property outside of an enterprise zone that is an integral part of its trade or business; and
- (2) is not owned or controlled directly or indirectly by a taxpayer that owns, rents, or leases real property outside of an enterprise zone;

is exempt from the allocation and apportionment provisions of this section.

(h) If a pass through entity is entitled to a credit under subsection (b) but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.

The credit provided under this subsection is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified expenditure.

SECTION 22. IC 6-3-1-4-6, AS AMENDED BY P.L.224-2003, SECTION 191, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. ~~Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for Indiana qualified research expense incurred after December 31, 2013.~~ Notwithstanding Section 41 of the Internal Revenue Code, the termination date in Section 41(h) of the Internal Revenue Code does not apply to a taxpayer who is eligible for the credit under this chapter for the taxable year in which the Indiana qualified research expense is incurred."

Page 31, between lines 6 and 7, begin a new paragraph and insert: "SECTION 28. IC 6-8-1-6-5, AS AMENDED BY P.L.254-2003, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 5. The department shall request from each taxpayer the amount of the taxpayer's gross income (as defined in Section 61 of the Internal Revenue Code) derived from sources within or outside Indiana using the provisions applicable to determining the source of adjusted gross income that are set forth in ~~IC 6-3-2-2~~ IC 6-3-2-2.1. The taxpayer shall itemize the amount of gross income derived from each source.

SECTION 29. IC 9-13-2-78 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 78. "Indiana resident" refers to a person who is one (1) of the following:

- (1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:

- (A) Attending an institution of higher education.
- (B) Serving on active duty in the armed forces of the United States.

- (2) A person who is living in Indiana if the person has no other legal residence.

- (3) A person who is registered to vote in Indiana.

- (4) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

- (5) A person who has more than one-half ($\frac{1}{2}$) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) derived from sources in Indiana using the provisions applicable to determining the source of adjusted gross income that are set forth in ~~IC 6-3-2-2~~ IC 6-3-2-2.1. However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4)."

Page 32, between lines 3 and 4, begin a new paragraph and insert: "SECTION 32. [EFFECTIVE JANUARY 1, 2005] IC 6-3-1-24 and IC 6-3-2-2.4, both as amended by this act, and IC 6-3-2-2.1, as added by this act, apply only to taxable years beginning after December 31, 2004.

SECTION 33. [EFFECTIVE JULY 1, 2004] For purposes of IC 6-2.5-5-39, as added by this act, all transactions shall be considered as having occurred after June 30, 2004, to the extent that delivery of the property or services constituting selling at retail is made after that date to the purchaser or to the place of delivery designated by the purchaser. However, a transaction shall be considered as having occurred before July 1, 2004, to the

extent that the agreement of the parties to the transaction was entered into before July 1, 2004, and payment for the property or services furnished in the transaction is made before July 1, 2004, notwithstanding the delivery of the property or services after June 30, 2004."

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

BORROR

Representative Pelath rose to a point of order, citing Rule 118, stating that the motion was attempting to incorporate into House Bill 1365 a bill pending before the House. The Chair ruled the point was well taken and the motion was out of order.

HOUSE MOTION (Amendment 1365-9)

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 27, line 2, delete "or indirectly".

Page 29, delete lines 1 through 4.

Page 29, line 5, delete "(5)" and insert "(1)".

Page 29, line 6, delete "(6)" and insert "(2)".

Page 29, line 7, delete "(7)" and insert "(3)".

Page 29, line 8, delete "(8)" and insert "(4)".

Page 29, line 9, delete "(9)" and insert "(5)".

Page 29, line 10, delete "(10)" and insert "(6)".

Page 29, line 11, delete "(11) other debt obligations, including" and insert "(7)".

Page 29, line 39, delete "property" and insert "investments".

(Reference is to HB 1365 as printed January 27, 2004.)

FRENZ

Motion prevailed.

HOUSE MOTION (Amendment 1365-12)

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 5, line 7, strike "an".

Page 5, line 7, after "an" insert "a state educational".

Page 5, line 7, strike "of higher education".

Page 10, delete lines 7 through 12, begin a new line block indented and insert:

"(20) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal adjusted gross income under the Internal Revenue Code."

Page 10, delete lines 39 through 42, begin a new line block indented and insert:

"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 11, delete lines 1 through 2.

Page 11, delete lines 29 through 34, begin a new line block indented and insert:

"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 12, delete lines 16 through 21, begin a new line block indented and insert:

"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 12, delete lines 40 through 42, begin a new line block

indented and insert:

"(4) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 13, delete lines 1 through 3.

Page 13, line 27, delete "clear and convincing" and insert **"a preponderance of the"**.

Page 13, line 29, delete "or".

Page 13, line 32, delete "." and insert **"; or"**.

Page 13, between lines 32 and 33, begin a new line block indented and insert:

"(3) the intangibles payments are being paid or incurred to a related member organized under the laws of a country other than the United States, and the other country has entered into a comprehensive income tax treaty with the United States."

Page 14, delete lines 2 through 17, begin a new paragraph and insert:

"SECTION 8. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 34. As used in this article, "intangibles payment" means a payment directly connected to the use, maintenance, or management of:

- (1) stock;**
- (2) bonds;**
- (3) interests in partnerships;**
- (4) licenses;**
- (5) trademarks;**
- (6) copyrights;**
- (7) trade names;**
- (8) trade dress;**
- (9) service marks;**
- (10) mask works;**
- (11) trade secrets;**
- (12) patents; or**
- (13) any other similar types of intangible assets, as determined by the department."**

Page 14, line 21, after "means" insert ",".

Page 14, line 22, delete ", is".

Page 14, line 29, delete "or partnership" and insert **"partnership, or any other pass through entity"**.

Page 14, delete lines 33 through 42.

Page 15, delete lines 1 through 23.

Page 15, line 24, delete "IC 6-3-1-38" and insert "IC 6-3-1-36".

Page 15, line 26, delete "38" and insert **"36"**.

Page 15, line 38, after "trust," delete "or".

Page 15, line 38, delete ";" and insert **", or other pass through entity;"**.

Page 28, line 33, delete "clear and convincing" and insert **"a preponderance of the"**.

Page 28, line 35, delete "or".

Page 28, line 37, delete "." and insert **"; or"**.

Page 28, between lines 37 and 38, begin a new line block indented and insert:

"(3) the intangibles payments are being paid or incurred to a related member organized under the laws of a country other than the United States, and the other country has entered into a comprehensive income tax treaty with the United States."

Page 29, line 4, delete "a".

Page 29, line 16, after "means" insert ",".

Page 29, line 17, delete ", is".

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

FRENZ

Motion prevailed.

HOUSE MOTION
(Amendment 1365-15)

Mr. Speaker: I move that House Bill 1365 be amended to read as

follows:

Page 5, line 7, strike "an" and insert **"a state educational"**.

Page 7, line 7, strike "of higher education".

Page 14, line 21, after "means" insert ",".

Page 14, line 22, after "year" delete ", is".

Page 25, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 16. IC 6-3.1-26-8, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 8. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures for:

(1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment;

(2) the purchase of new computers and related equipment;

(3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;

(4) onsite infrastructure improvements;

(5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;

(6) costs associated with retooling existing machinery and equipment; and

(7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry.

that are certified by the board under this chapter as being eligible for the credit under this chapter:

(b) The term does not include property that can be readily moved outside Indiana.

SECTION 2. IC 6-3.1-26-10, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 10. As used in this chapter, "state tax liability growth" means the difference between a taxpayer's state tax liability in a taxable year minus the greater of:

(1) the taxpayer's state tax liability in the most recent prior taxable year in which the taxpayer claimed part of a credit under this chapter; or

(2) the taxpayer's base state tax liability, before the application of a credit under this chapter.

SECTION 3. IC 6-3.1-26-13, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 13. A taxpayer that:

(1) is awarded a tax credit under this chapter by the board; and

(2) complies with the conditions set forth in this chapter and the agreement entered into by the board and the taxpayer under this chapter;

(1) makes a qualified investment; or

(2) creates the number of jobs required under section 13.5 of this chapter;

is entitled to a credit against the taxpayer's state tax liability in a taxable year.

SECTION 4. IC 6-3.1-26-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 13.5. To qualify for a credit under section 13(2) of this chapter, a taxpayer must increase in a particular taxable year the number of the taxpayer's employees working in Indiana by:

(1) at least ten (10), in the case of a taxpayer having at least one hundred (100) employees on the first day of the taxpayer's taxable year; or

(2) at least ten percent (10%), in the case of a taxpayer having less than one hundred (100) employees on the first day of the taxpayer's taxable year.

SECTION 5. IC 6-3.1-26-14, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 14. (a) This section applies only to a taxpayer entitled to a credit under

section 13(1) of this chapter.

(b) The total amount of a tax credit ~~claimed~~ **allowed** under this chapter equals thirty percent (30%) of the amount of a qualified investment made by the taxpayer in Indiana. **However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the taxpayer makes a qualified investment may not exceed the taxpayer's state tax liability growth.**

(b) In the taxable year in which a taxpayer makes a qualified investment, the taxpayer may claim a credit under this chapter in an amount equal to the lesser of:

- (1) thirty percent (30%) of the amount of the qualified investment; or
- (2) the taxpayer's state tax liability growth.

(c) The taxpayer may carry forward any unused credit.

SECTION 6. IC 6-3.1-26-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 14.5. (a) This section applies only to a taxpayer entitled to a credit under section 13(2) of this chapter.**

(b) **The total amount of a tax credit allowed under this chapter equals thirty percent (30%) of the amount of wages and benefits paid to the taxpayer's new employees in the taxable year in which the new employees were first employed. However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the new employees were first employed may not exceed the taxpayer's state tax liability growth.**

(c) **The taxpayer may carry forward any unused credit.**

SECTION 7. IC 6-3.1-26-15, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 15. (a) A taxpayer may carry forward an unused credit for not more than nine (9) consecutive taxable years beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment or hires the number of new employees required under section 13.5 of this chapter.**

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the lesser of the following:

- (1) The taxpayer's state tax liability growth.
- (2) The unused part of a credit allowed under this chapter.

(c) A taxpayer may:

- (1) claim a tax credit under this chapter for a qualified investment **or for hiring the number of new employees required under section 13.5 of this chapter;** and
- (2) carry forward a remainder for one (1) or more:
 - (A) different qualified investments; or
 - (B) **credits claimed for hiring the number of new employees required under section 13.5 of this chapter;**

in the same taxable year.

(d) The total amount of each tax credit claimed under this chapter may not exceed:

- (1) thirty percent (30%) of the qualified investment for which the tax credit is claimed, **in the case of a taxpayer that qualifies for a tax credit under section 13(1) of this chapter; or**
- (2) **thirty percent (30%) of the amount of wages and benefits paid to the taxpayer's new employees in the taxable year in which the new employees were first employed, in the case of a taxpayer that qualifies for a tax credit under section 13(2) of this chapter.**

SECTION 8. IC 6-3.1-26-16, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 16. If a pass through entity does not have state tax liability growth against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit against the shareholder's or partner's state tax liability equal to:**

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

SECTION 9. IC 6-3.1-26-19, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 19. A**

person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. ~~Determinations under this section shall be made by the board.~~

SECTION 10. IC 6-3.1-26-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 27. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue all information that the department of state revenue determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether the taxpayer has made a qualified investment as required under section 13 of this chapter or hired the required number of new employees under section 13.5 of this chapter."**

Page 29, line 4, delete "a".

Page 29, line 16, after "means" insert ";".

Page 29, line 17, after "year" delete ", is".

Page 31, between lines 6 and 7, begin a new paragraph and insert: "SECTION 11. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: IC 6-3.1-26-2; IC 6-3.1-26-3; IC 6-3.1-26-5; IC 6-3.1-26-12; IC 6-3.1-26-17; IC 6-3.1-26-18; IC 6-3.1-26-20; IC 6-3.1-26-21; IC 6-3.1-26-22; IC 6-3.1-26-23; IC 6-3.1-26-24; IC 6-3.1-26-25; IC 6-3.1-26-26; P.L.224-2003, SECTION 198.

SECTION 12. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] **Subject to carryovers authorized by IC 6-3.1-26-15, as amended by this act, IC 6-3.1-26, as amended by this act, applies to taxable years beginning after December 31, 2004.**

SECTION 13. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] **IC 6-3.1-26-13.5, IC 6-3.1-26-14.5, and IC 6-3.1-26-27, all as added by this act, apply to taxable years beginning after December 31, 2003."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

ESPICH

Motion prevailed. The bill was ordered engrossed.

House Bill 1266

Representative Ayres called down House Bill 1266 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1266-1)

Mr. Speaker: I move that House Bill 1266 be amended to read as follows:

Page 2, line 7, after "purchases" insert **"of property and supplies"**.

Page 2, line 9, after "purchases" insert **"of property and supplies"**.

Page 2, line 26, after "bids" insert **"of property and supplies"**.

Page 4, line 27, after "offers" insert **"for property and supplies"**.

Page 6, line 9, delete **"and"**.

Page 6, line 10, delete **"."** and insert **"; and"**.

Page 6, after line 10, begin a new subparagraph and insert:

(3) school corporations.

(Reference is to HB 1266 as printed January 30, 2004.)

AYRES

Motion prevailed. The bill was ordered engrossed.

House Bill 1270

Representative Liggett called down House Bill 1270 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1270-3)

Mr. Speaker: I move that House Bill 1270 be amended to read as follows:

Delete pages 1 through 5.

Page 6, delete lines 1 through 34.

Page 6, between lines 34 and 35, begin a new paragraph and insert: "SECTION 1. IC 22-6-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 5. Right to Work

Sec. 1. This chapter does not apply to the following:

- (1) A person employed by the United States or a wholly owned corporation of the United States.
- (2) A person subject to the federal Railway Labor Act (45 U.S.C. 151 et seq.).

Sec. 2. The provisions of this chapter do not apply to the extent that they conflict with the federal National Labor Relations Act (29 U.S.C. 151 et seq.) or any other federal law or regulation concerning labor relations or labor organizations.

Sec. 3. As used in this chapter, "employer" includes:

- (1) a person employing at least two (2) persons within Indiana;
- (2) a public body; or
- (3) an agent acting directly or indirectly for an employer.

Sec. 4. As used in this chapter, "labor organization" means any organization, agency, or employee representation committee that exists for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, labor disputes, wages, rates of pay, terms, or conditions of employment. The term includes a school employee organization (as defined in IC 20-7.5-1-2(k)).

Sec. 5. As used in this chapter, "person" means an individual, a proprietorship, a partnership, a joint venture, a firm, an association, a corporation, or other legal entity.

Sec. 6. As used in this chapter, "public body" includes the following:

- (1) The state.
- (2) A political subdivision (as defined in IC 36-1-2-13).
- (3) A public transportation agency (as defined in IC 36-9-1-5.5).
- (4) A public utility employer (as defined in IC 22-6-2-2).
- (5) A school employer (as defined in IC 20-7.5-1-2(c)).

Sec. 7. As used in this chapter, "state" includes any board, branch, commission, department, division, bureau, committee, agency, institution, authority, or other instrumentality of the state of Indiana.

Sec. 8. An employer may not, as a condition of employment or continuation of employment, require a person to:

- (1) become or remain a member of a labor organization;
- (2) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or
- (3) pay an amount to a charity or third party that is equivalent to or a pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization.

Sec. 9. A written or an oral contract or agreement, express or implied, between a labor organization and an employer that does not comply with section 8 of this chapter is void.

Sec. 10. A person who knowingly or intentionally violates section 8 of this chapter commits a Class A misdemeanor.

Sec. 11. The attorney general or the appropriate prosecuting attorney shall:

- (1) investigate complaints concerning violations of this chapter; and
- (2) enforce compliance with this chapter by any appropriate action.

Sec. 12. (a) A person who is injured as the result of an act or practice that violates this chapter or who suffers injury from a threatened violation may bring a civil action to obtain any or all of the following:

- (1) Actual and consequential damages resulting from the violation.
- (2) A civil penalty of not more than one thousand five hundred dollars (\$1,500).
- (3) Reasonable attorney's fees, litigation expenses, and costs.
- (4) Declaratory or equitable relief, including injunctive relief.
- (5) Any other relief the court considers proper.

(b) The remedies and penalties in subsection (a) are cumulative and in addition to any other remedies and penalties available for the violation of this chapter."

Page 16, after line 26, begin a new paragraph and insert: "SECTION 11. [EFFECTIVE JULY 1, 2004] **(a) This act does not apply to or abrogate a contract or an agreement in effect on June 30, 2004.**

(b) This act applies to a contract or an agreement entered into, modified, renewed, or extended after June 30, 2004.

(c) This SECTION expires July 1, 2007.

SECTION 12. [EFFECTIVE JULY 1, 2004] **The provisions of this act are severable in the manner provided by IC 1-1-1-8(b)."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1270 as printed January 30, 2004.)

TORR

Representative Pelath rose to a point of order, citing Rule 118, stating that the motion was attempting to incorporate into House Bill 1270 a bill pending before the House. The Chair ruled the point was well taken and the motion was out of order.

APPEAL OF THE RULING OF THE CHAIR

Mr. Speaker: We hereby appeal the ruling of the Chair that Representative Torr's amendment (1270-3) violates House Rule 118.

Rule 118 provides that no bill may be amended by annexing to it or incorporating with it any other bill pending before the House. Amendment 3 to House Bill 1270, offering "Right to Work" language, is not a bill pending. Whereas "Right to Work" language has been presented to the House in the form of a bill, that bill is no longer before the body as the deadline for the bill to move has long since passed. Therefore, the "Right to Work" language incorporated in Amendment 3 to House Bill 1270 should be heard.

TORR

WHETSTONE

The Speaker Pro Tempore yielded the gavel to the Deputy Speaker Pro Tempore, Representative Harris.

The question was, Shall the ruling of the Chair be sustained? Roll Call 98: yeas 48, nays 47. The ruling of the Chair was sustained.

The Deputy Speaker Pro Tempore yielded the gavel to the Speaker Pro Tempore.

There being no further amendments, the bill was ordered engrossed.

House Bill 1300

Representative Bottorff called down House Bill 1300 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1300-2)

Mr. Speaker: I move that House Bill 1300 be amended to read as follows:

Page 3, line 7, after "court," insert **"after being ordered to do so by the court,"**

(Reference is to HB 1300 as printed January 30, 2004.)

BOTTORFF

Motion prevailed. The bill was ordered engrossed.

House Bill 1278

Representative Whetstone called down House Bill 1278 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1278-2)

Mr. Speaker: I move that House Bill 1278 be amended to read as follows:

Page 2, after line 31, begin a new paragraph and insert:

"(f) Except as provided in subsection (g), territory annexed under this section may not be considered a part of the municipality for the purposes of involuntarily annexing additional territory.

(g) Territory annexed under this section shall be considered a part of the municipality for purposes of annexing additional

territory under section 5 or section 5.1 of this chapter."

(Reference is to HB 1278 as printed January 30, 2004.)

WHETSTONE

Motion prevailed.

HOUSE MOTION
(Amendment 1278-1)

Mr. Speaker: I move that House Bill 1278 be amended to read as follows:

Page 2, between lines 7 and 8, begin a new line block indented and insert:

"(5) A town having a population of more than three thousand five hundred (3,500) located in a county having a population of more than one hundred thirty thousand (130,000) but less than one hundred forty-five thousand (145,000)."

(Reference is to HB 1278 as printed January 30, 2004.)

RESKE

Motion prevailed. The bill was ordered engrossed.

House Bill 1308

Representative Porter called down House Bill 1308 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1308-2)

Mr. Speaker: I move that House Bill 1308 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 20-6.1-3-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.5. (a) After January 1, 2006, an individual who seeks to renew a license issued under this chapter must demonstrate proficiency in the areas in which the individual is licensed to teach by passing an examination once during each five (5) year period.

(b) The board shall develop and administer the examinations required under this subsection."

Renumber all SECTIONS consecutively.

(Reference is to HB 1308 as printed January 30, 2004.)

TURNER

Upon request of Representatives Fry and Porter, the Chair ordered the roll of the House to be called. Roll Call 99: yeas 19, nays 73. Motion failed.

HOUSE MOTION
(Amendment 1308-6)

Mr. Speaker: I move that House Bill 1308 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

SECTION 1. IC 20-10.1-16-4, AS AMENDED BY P.L.146-1999, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The board shall:

- (1) authorize the development and implementation of the Indiana statewide testing for educational progress program; and**
- (2) determine the date, which must be during the spring semester of the school year, on which the statewide testing is Administered in each school corporation.**

(b) The state superintendent is responsible for the overall development, implementation, and monitoring of the ISTEP program.

(c) The department shall prepare detailed design specifications for the ISTEP program that must do the following:

- (1) Take into account the academic standards.**
- (2) Include testing of students' higher level cognitive thinking in each subject area tested.**

Renumber all SECTIONS consecutively.

(Reference is to HB 1308 as printed January 30, 2004.)

STUTZMAN

Representative Pelath rose to a point of order, citing Rule 80,

stating that the motion was not germane to the bill. The Chair ruled the point was well taken and the motion was out of order.

APPEAL OF THE RULING OF THE CHAIR

Mr. Speaker: We hereby appeal the ruling of the Chair that Representative Stutzman's amendment (1308-6) is not germane.

Rule 80 provides that no motion or proposition on a subject not germane to that under consideration shall be admitted under color of an amendment. Amendment 6 to House Bill 1308 concerns moving the ISTEP test from the fall to the spring, which is germane to the subject matter of the bill regarding education.

STUTZMAN
WHETSTONE

The Speaker Pro Tempore yielded the gavel to the Deputy Speaker Pro Tempore, Representative Harris.

The question was, Shall the ruling of the Chair be sustained? Roll Call 100: yeas 47, nays 47. The ruling of the Chair was sustained.

The Deputy Speaker Pro Tempore yielded the gavel to the Speaker Pro Tempore.

There being no further amendments, the bill was ordered engrossed.

INTRODUCTION OF BILLS

The following bills were read a first time by title and referred to the respective committees:

ESB 19 — Moses, Borror, Pond (Roads and Transportation)
A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

ESB 21 — Kuzman, Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

ESB 22 — Bottorff, Grubb, Friend, Wolkins (Environmental Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

ESB 29 — Reske, Becker (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning health and education.

ESB 37 — Kuzman, Lehe (Elections and Apportionment)
A BILL FOR AN ACT to amend the Indiana Code concerning elections.

ESB 39 — Frenz, Hinkle (Local Government)
A BILL FOR AN ACT to amend the Indiana Code concerning human services.

ESB 41 — C. Brown (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning health.

ESB 45 — Hasler, Koch (Technology, Research and Development)
A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

ESB 97 — Torr (Appointments and Claims)
A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

ESB 100 — Pelath, Buck, Crawford (Rules and Legislative Procedures)
A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

ESB 104 — Porter, Scholer (Education)
A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

- ESB 115** — Summers, Duncan (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.
- ESB 133** — C. Brown, Becker (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning human services.
- ESB 139** — Dvorak, Foley, Crawford, Koch (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning corrections.
- ESB 144** — Bottorff, Wolkins (Environmental Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.
- ESB 151** — Austin, Espich (Local Government)
A BILL FOR AN ACT to amend the Indiana Code concerning local government.
- ESB 154** — Oxley, Bosma (Courts and Criminal Code)
A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.
- ESB 159** — Denbo, Torr (Insurance, Corporations and Small Business)
A BILL FOR AN ACT to amend the Indiana Code concerning insurance.
- ESB 171** — Hasler, Stevenson (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 196** — Dvorak, Becker (Courts and Criminal Code)
A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.
- ESB 198** — Van Haaften, Becker (Commerce and Economic Development)
A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.
- ESB 201** — L. Lawson, Foley (Judiciary)
A BILL FOR AN ACT to amend the Indiana Code concerning property.
- ESB 202** — Mays, Borrer (Labor and Employment)
A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.
- ESB 203** — Grubb, Saunders (Public Policy, Ethics and Veterans Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning war memorials.
- ESB 213** — C. Brown, Becker (Public Health)
A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.
- ESB 214** — Reske, Scholer (Roads and Transportation)
A BILL FOR AN ACT concerning motor vehicles.
- ESB 215** — Lytle, Bischoff, Whetstone (Public Policy, Ethics and Veterans Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning gaming.
- ESB 223** — Kuzman, Borrer, GiaQuinta, Espich (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning local government.
- ESB 225** — Moses, GiaQuinta, Borrer, Kuzman (Local Government)
A BILL FOR AN ACT to amend the Indiana Code concerning local government.

- ESB 247** — Crawford, Becker, Lytle (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

INTRODUCTION OF JOINT RESOLUTIONS

The following joint resolutions were read a first time by title and referred to the respective committees:

- ESJR 7** — Kruse, Ripley, Noe (Rules and Legislative Procedures)

A JOINT RESOLUTION proposing an amendment to Article 1 of the Constitution of the State of Indiana concerning the definition of marriage.

Be it resolved by the General Assembly of the State of Indiana:

SECTION 1. The following amendment to the Constitution of the State of Indiana is proposed and agreed to by this, the One Hundred Thirteenth General Assembly of the State of Indiana, and is referred to the next General Assembly for reconsideration and agreement.

SECTION 2. ARTICLE 1 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS: **Section 38. (a) Marriage in Indiana consists only of the union of a man and a woman.**

(b) This Constitution or any other Indiana law may not be construed to require that marital status or the legal incidents of marriage be conferred upon unmarried couples or groups.

ENGROSSED HOUSE BILLS ON THIRD READING

HOUSE MOTION

Mr. Speaker: I move that House Bill 1044 be reconsidered pursuant to Rule 95.

LIGGETT

Motion prevailed.

Engrossed House Bill 1044

The Chair handed down for third reading Engrossed House Bill 1044, authored by Representative V. Smith:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

The bill was reread a third time by sections and placed upon its passage.

HOUSE MOTION (Amendment 1044-1)

Mr. Speaker: I move that Engrossed House Bill 1044 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 2, line 12, delete "Class D felony" and insert "**Class A misdemeanor**".

(Reference is to HB 1044 as printed January 23, 2004.)

V. SMITH

The Chair ordered the roll of the House to be called. Roll Call 101: yeas 86, nays 9. There being a two-thirds vote in favor of the motion, the motion prevailed.

COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred Engrossed House Bill 1044, begs leave to report that said bill has been amended as directed.

V. SMITH

Report adopted.

The question then was, Shall the bill pass?

Roll Call 102: yeas 73, nays 21. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsor: Senator Long.

HOUSE BILLS ON SECOND READING

House Bill 1334

Representative L. Lawson called down House Bill 1334 for second reading. The bill was read a second time by title. There being no amendments, the bill was ordered engrossed.

House Bill 1151

Representative Mahern called down House Bill 1151 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1151-12)

Mr. Speaker: I move that House Bill 1151 be amended to read as follows:

Page 20, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 32. [EFFECTIVE UPON PASSAGE] (a) **The legislative council shall:**

(1) direct an interim or statutory committee determined by the legislative council to study the existing criminal penalties for election law violations under IC 3; and

(2) direct the committee to report its findings to the legislative council in an electronic format under IC 5-14-6 not later than November 1, 2004.

(b) This SECTION expires January 1, 2005."

Renumber all SECTIONS consecutively.

(Reference is to HB 1151 as printed January 30, 2004.)

KUZMAN

Motion prevailed.

HOUSE MOTION (Amendment 1151-14)

Mr. Speaker: I move that House Bill 1151 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 3-6-8-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) A watcher appointed under this chapter must **satisfy both of the following:**

(1) A watcher must be a registered voter of the county.

(2) A watcher may not be related to a candidate in a manner that would disqualify the watcher to serve as a precinct election officer under IC 3-6-6-7(a)(4)."

Page 11, between lines 29 and 30, begin a new paragraph and insert:

"SECTION 11. IC 3-12-6-1.5, AS AMENDED BY P.L.40-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. A candidate for election to precinct committeeman or state convention delegate is **not** entitled to have the votes cast for that office recounted under this chapter. The political party of the candidate, in accordance with any applicable party rules, determines the winner of an election to a political party office.

SECTION 12. IC 3-12-6-21.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21.7. (a) **The recount commission shall count the ballots in each precinct separately.**

(b) Unless the recount commission makes a finding under subsection (b), (c) and issues an order under subsection (d), the recount commission shall

(1) count ballots in accordance with this article. and

(2) not order that all ballots in a precinct not be counted.

(b) (c) If

(1) a party to the recount presents evidence of fraud, tampering, or misconduct affecting that occurred in a precinct, the commission may make a finding that the fraud, tampering, or misconduct affected the integrity of the ballot balloting within a that precinct and

(2) to the extent that the commission determines that the fraud, tampering, or misconduct within that precinct was so pervasive that it is impossible for the commission is unable to determine

the approximate number of votes that each candidate received in that precinct.

(d) If the commission makes a finding under subsection (c), the commission may order that none of the ballots from that precinct be counted.

(e) If the commission adopts an order permitted by subsection (d), the commission shall determine the number of votes received by each candidate without including any votes cast in the affected precinct."

Page 18, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 33. IC 33-16-4-1, AS AMENDED BY P.L.176-1999, SECTION 130, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The following are authorized to subscribe and administer oaths and take acknowledgments of all documents whatsoever, pertaining to all matters where an oath is required:

(1) Notaries public.

(2) Justices and judges of courts, in their respective jurisdictions.

(3) The secretary of state of Indiana.

(4) The clerk of the supreme court.

(5) Mayors, clerks, clerk-treasurers of towns and cities, and township trustees, in their respective towns, cities, and townships.

(6) Clerks of circuit courts and master commissioners, in their respective counties.

(7) Judges of United States district courts of Indiana, in their respective jurisdictions.

(8) United States commissioners appointed for any United States district court of Indiana, in their respective jurisdictions.

(9) The following, for any purpose authorized under IC 3:

(A) A precinct election officer (as defined in IC 3-5-2-40.1). and

(B) An absentee voter board member appointed under IC 3-11-10, for any purpose authorized under IC 3.

(C) The director, the assistant director, or an employee of the board of elections and registration established by IC 3-6-5-2.3.

(10) A member of the Indiana election commission, a co-director of the election division, or an employee of the election division under IC 3-6-4.2.

(11) County auditors, in their respective counties.

(12) Any member of the general assembly anywhere in Indiana."

Renumber all SECTIONS consecutively.

(Reference is to HB 1151 as printed January 30, 2004.)

KUZMAN

Motion prevailed.

HOUSE MOTION (Amendment 1151-10)

Mr. Speaker: I move that House Bill 1151 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 3-10-1-7.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.2. (a) **Before a voter proceeds to vote in a primary election, the poll clerk, an assistant poll clerk, or a member of the precinct election board shall ask the voter to provide a current and valid photo identification issued by the government of the United States, the state of Indiana, or an Indiana political subdivision. Except as provided in subsection (b), the voter must produce the identification before being permitted to vote. If the voter is unable or declines to produce the identification, the board shall provide a provisional ballot to the voter under IC 3-11.7 after the poll clerk, assistant poll clerk, or precinct election board member executes a challenge affidavit in accordance with IC 3-11.7.**

(b) A voter is not required to produce identification under subsection (a) if the voter executes an affidavit, in the form prescribed by the commission, affirming under the penalties for

perjury that either of the following applies to the voter:

- (1) The voter is indigent and unable to obtain identification without the payment of a fee.**
- (2) The voter has a religious objection to being photographed."**

Page 8, after line 42, begin a new paragraph and insert:

"SECTION 9. IC 3-11-8-25, AS AMENDED BY P.L.209-2003, SECTION 134, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) After a voter has passed the challengers or has been sworn in, the voter shall be admitted to the polls. Upon entering the polls, the voter shall announce the voter's name to the poll clerks or assistant poll clerks. A poll clerk, an assistant poll clerk, or a member of the precinct election board shall require the voter to write the following on the poll list:

- (1) The voter's name.
- (2) The voter's current residence address.

(b) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall:

- (1) ask the voter to provide the voter's voter identification number;
- (2) tell the voter the number the voter may use as a voter identification number; and
- (3) explain to the voter that the voter is not required to provide a voter identification number at the polls.

(c) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall ask the voter to provide a current and valid photo identification issued by the government of the United States, the state of Indiana, or an Indiana political subdivision. Except as provided in subsection (k), the voter must produce the identification before being permitted to vote. If the voter is unable or declines to produce the identification, the board shall provide a provisional ballot to the voter under IC 3-11.7 after the poll clerk, assistant poll clerk, or precinct election board member executes a challenge affidavit in accordance with IC 3-11.7.

(d) This subsection applies after December 31, 2003. The poll clerk or assistant poll clerk shall examine the list provided under IC 3-7-29-1 or IC 3-11-3-18 to determine if the county election board has indicated that the voter is required to provide additional personal identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a certification concerning absentee voters under IC 3-11-10-12) indicates that the voter is required to present this identification before voting in person, the poll clerk shall advise the voter that the voter must present a piece of identification described in subsection **(e)** to the poll clerk.

(e) This subsection applies after December 31, 2003. As required by 42 U.S.C. 15483, a voter described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5 before appearing at the polls on election day must present one (1) of the following documents to the poll clerk:

- (1) a current and valid photo identification; or
- (2) a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

(f) This subsection applies after December 31, 2003. If a voter presents a document under subsection **(d)**; **(e)**, the poll clerk shall add a notation to the list indicating the type of document presented by the voter. The election division shall prescribe a standardized coding system to classify documents presented under this subsection for entry into the county voter registration system.

(g) This subsection applies after December 31, 2003. If a voter required to present documentation under subsection **(d)**; **(e)** is unable to present the documentation to the poll clerk while present in the polls, the poll clerk shall notify the precinct election board. The board shall provide a provisional ballot to the voter under IC 3-11.7-2.

(h) This subsection applies after December 31, 2003. The precinct election board shall advise the voter that the voter may file a copy of the documentation with the county voter registration office to permit the provisional ballot to be counted under IC 3-11.7.

(i) This subsection does not apply to a precinct in a county with a computerized registration system whose inspector was:

- (1) furnished with a list certified under IC 3-7-29; and
- (2) not furnished with a certified photocopy of the signature on

the affidavit of registration of each voter of the precinct for the comparison of signatures under this section.

In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under IC 3-7-29. If the board determines that the voter's signature is authentic, the voter may then vote. If either poll clerk doubts the voter's identity following comparison of the signatures the poll clerk shall challenge the voter in the manner prescribed by section 21 of this chapter.

(j) If, in a precinct governed by subsection **(i)**:

- (1) the poll clerk does not execute a challenger's affidavit; or
- (2) the voter executes a challenged voter's affidavit under section 22 of this chapter or had executed the affidavit before signing the poll list;

the voter may then vote.

(k) A voter is not required to produce identification under subsection (c) if the voter executes an affidavit, in the form prescribed by the commission, affirming under the penalties for perjury that either of the following applies to the voter:

- (1) The voter is indigent and unable to obtain identification without the payment of a fee.**
- (2) The voter has a religious objection to being photographed.**

(l) This section expires January 1, 2006.

SECTION 10. IC 3-11-8-25.1, AS ADDED BY P.L.209-2003, SECTION 135, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25.1. (a) This section applies after December 31, 2005.

(b) After a voter has passed the challengers or has been sworn in, the voter shall be admitted to the polls. Upon entering the polls, the voter shall announce the voter's name to the poll clerks or assistant poll clerks. A poll clerk, an assistant poll clerk, or a member of the precinct election board shall require the voter to write the following on the poll list:

- (1) The voter's name.
- (2) The voter's current residence address.

(c) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall:

- (1) ask the voter to provide or update the voter's voter identification number;
- (2) tell the voter the number the voter may use as a voter identification number; and
- (3) explain to the voter that the voter is not required to provide or update a voter identification number at the polls.

(d) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall ask the voter to provide a current and valid photo identification issued by the government of the United States, the state of Indiana, or an Indiana political subdivision. Except as provided in subsection (e), the voter must produce the identification before being permitted to vote. If the voter is unable or declines to produce the identification, the board shall provide a provisional ballot to the voter under IC 3-11.7 after the poll clerk, assistant poll clerk, or precinct election board member executes a challenge affidavit in accordance with IC 3-11.7.

(e) A voter is not required to produce identification under subsection (d) if the voter executes an affidavit, in the form prescribed by the commission, affirming under the penalties for perjury that either of the following applies to the voter:

- (1) The voter is indigent and unable to obtain identification without the payment of a fee.**
- (2) The voter has a religious objection to being photographed.**

(f) In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under IC 3-7-29. If the board determines that the voter's signature is authentic, the voter may then vote. If either poll clerk doubts the voter's identity following comparison of the signatures, the poll clerk shall challenge the voter in the manner prescribed by section 21 of this chapter.

(g) If, in a precinct governed by subsection (c):

(1) the poll clerk does not execute a challenger's affidavit; or
 (2) the voter executes a challenged voter's affidavit under section 22 of this chapter or executed the affidavit before signing the poll list;
 the voter may then vote."

Renumber all SECTIONS consecutively.

(Reference is to HB 1151 as printed January 30, 2004.)

THOMPSON

Upon request of Representatives Thompson and Bosma, the Chair ordered the roll of the House to be called. Roll Call 103: yeas 48, nays 48. Motion failed. The bill was ordered engrossed.

House Bill 1352

Representative Hasler called down House Bill 1352 for second reading. The bill was read a second time by title.

HOUSE MOTION
 (Amendment 1352-1)

Mr. Speaker: I move that House Bill 1352 be amended to read as follows:

Page 1, line 14, delete ", the southwest Indiana".
 Page 1, line 15, delete "law enforcement training academy".
 Page 5, line 27, delete "shall" and insert "**may**".
 Page 5, line 28, delete "center." and insert "**academy**".
 Page 5, line 29, delete "center" and insert "**academy**".
 Page 5, between lines 28 and 29, begin a new paragraph and insert:
"(b) If the board adopts rules under subsection (a) to establish a southwest Indiana law enforcement training academy, the board shall in accordance with IC 4-22-2 adopt rules establishing minimum standards for the southwest Indiana law enforcement training academy."

Page 5, line 29, delete "(b)" and insert "(c)".
 Page 5, line 39, delete "center" and insert "**academy**".
 Page 5, line 40, delete "section 9(a)(2)" and insert "**subsection (b)**".

Page 5, after line 40, begin a new paragraph and insert:
"SECTION 3. [EFFECTIVE JULY 1, 2004] The southwest Indiana law enforcement training academy may only receive funding from:

- (1) a local unit of government (as defined in IC 14-22-31.5-1);**
- (2) a unit of a fraternal order or a similar association;**
- (3) charitable contributions; or**
- (4) federal grants."**

(Reference is to HB 1352 as printed January 30, 2004.)

HASLER

Motion prevailed. The bill was ordered engrossed.

House Bill 1425

Representative Thomas called down House Bill 1425 for second reading. The bill was read a second time by title. There being no amendments, the bill was ordered engrossed.

House Bill 1359

Representative Van Haaften called down House Bill 1359 for second reading. The bill was read a second time by title.

HOUSE MOTION
 (Amendment 1359-2)

Mr. Speaker: I move that House Bill 1359 be amended to read as follows:

Page 2, line 9, delete "means," and insert "means".
 Page 2, line 9, strike "except as provided in subsection (b)".
 Page 3, line 18, delete "equipment that is used commercially off a highway".
 Page 3, line 19, delete "including".
 Page 3, line 19, delete "The term".
 Page 3, delete line 20.
 Page 5, line 40, strike "(7) an implement of".
 Page 5, line 41, delete "agriculture designed to be operated primarily".
 Page 5, delete line 42.
 Page 6, line 1, strike "(8)" and insert "(7)".

Page 6, line 2, strike "(9)" and insert "(8)".

Page 6, line 2, delete "or".

Page 6, line 3, strike "(10)" and insert "(9)".

Page 6, line 3, reset in roman "or".

Page 6, line 4, after "(11)" insert "(10)".

Page 6, line 4, reset in roman "special".

Page 6, line 4, reset in roman "machinery";.

Page 6, between lines 15 and 16, begin a new paragraph and insert:
"SECTION 14. IC 9-18-2-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 43. (a) Notwithstanding any law to the contrary but except as provided in subsection (b), a law enforcement officer authorized to enforce motor vehicle laws who discovers a vehicle required to be registered under this article that does not have the proper certificate of registration or license plate:

(1) shall take the vehicle into the officer's custody; and

(2) may cause the vehicle to be taken to and stored in a suitable place until:

(A) the legal owner of the vehicle can be found; or

(B) the proper certificate of registration and license plates have been procured.

(b) A law enforcement officer who discovers a vehicle in violation of the registration provisions of this article has discretion in the impoundment of may not impound any of the following:

(1) Perishable commodities.

(2) Livestock.

(c) A person who recklessly violates this section commits a Class A misdemeanor."

Page 11, line 7, after "operate" insert ":

(1)".

Page 11, line 8, after "premises" insert "; or

(2) a piece of special machinery";.

Page 11, line 8, block left beginning with "upon".

Page 14, line 38, delete ":

Page 15, delete lines 5 through 6.

Page 15, line 7, delete "(2)".

Run in page 14, line 38 through page 15, line 7.

Page 15, line 7, delete ":

Page 15, run in lines 7 through 8.

Page 15, line 27, before "farm", reset in roman "a" and insert ":

(1)".

Page 15, line 27, reset in roman "farm tractor".

Page 15, line 27, after "tractor" insert "; or

(2) properly registered motor vehicle."

Page 15, line 28, delete "an implement of agriculture".

Page 15, delete line 29.

Page 17, line 32, strike "twenty (20)" and insert "**twenty-five (25)**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1359 as printed February 2, 2004.)

CHERRY

Motion prevailed. The bill was ordered engrossed.

House Bill 1436

Representative Crawford called down House Bill 1436 for second reading. The bill was read a second time by title.

HOUSE MOTION
 (Amendment 1436-2)

Mr. Speaker: I move that House Bill 1436 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-13-16.5-1, AS AMENDED BY P.L.195-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. As used in this chapter:

"Commission" refers to the governor's commission on minority and women's business enterprises established under section 2 of this chapter.

"Commissioner" refers to the deputy commissioner for minority and women's business enterprises of the department.

"Contract" means any contract awarded by a state agency for construction projects or the procurement of goods or services,

including professional services.

"Department" refers to the Indiana department of administration established by IC 4-13-1-2.

"Minority business enterprise" or "minority business" means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one (1) or more persons who are:

- (1) United States citizens; and
- (2) members of a minority group.

"Owned and controlled" means having:

- (1) ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation;
- (2) control over the management and active in the day-to-day operations of the business; and
- (3) an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership.

"Minority group" means:

- (1) Blacks;
- (2) American Indians;
- (3) Hispanics;
- (4) Asian Americans; and
- (5) other similar minority groups, as defined by 13 CFR 124.103.

"Separate body corporate and politic" refers to an entity established by the general assembly as a body corporate and politic.

~~"State agency" refers to any of the following:~~

- ~~(1) An authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government.~~
- ~~(2) An entity established by the general assembly as a body corporate and politic.~~
- ~~(3) A "State educational institution" has the meaning set forth in IC 20-12-0.5-1.~~

~~The term does not include the state lottery commission or the Indiana gaming commission with respect to setting and enforcing goals for awarding contracts to minority and women's business enterprises.~~

SECTION 2. IC 4-13-16.5-2, AS AMENDED BY P.L.41-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) There is established a governor's commission on minority and women's business enterprises. The commission shall consist of the following members:

- (1) A governor's designee, who shall serve as chairman of the commission.
- (2) The commissioner of the Indiana department of transportation.
- (3) The director of the department of commerce.
- (4) The commissioner of the department.
- (5) Nine (9) individuals with demonstrated capabilities in business and industry, especially minority and women's business enterprises, appointed by the governor from the following geographical areas of the state:
 - (A) Three (3) from the northern one-third (1/3) of the state.
 - (B) Three (3) from the central one-third (1/3) of the state.
 - (C) Three (3) from the southern one-third (1/3) of the state.
- (6) Two (2) members of the house of representatives, no more than one (1) from the same political party, appointed by the speaker of the house of representatives to serve in a nonvoting advisory capacity.
- (7) Two (2) members of the senate, no more than one (1) from the same political party, appointed by the president pro tempore of the senate to serve in a nonvoting advisory capacity.

Not more than six (6) of the ten (10) members appointed or designated by the governor may be of the same political party. Appointed members of the commission shall serve four (4) year terms. A vacancy occurs if a legislative member leaves office for any reason. Any vacancy on the commission shall be filled in the same manner as the original appointment.

(b) Each member of the commission who is not a state employee is entitled to the following:

- (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
- (2) Reimbursement for traveling expenses and other expenses

actually incurred in connection with the member's duties as provided under IC 4-13-1-4 and in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each legislative member of the commission is entitled to receive the same per diem, mileage, and travel allowances established by the legislative council and paid to members of the general assembly serving on interim study committees. The allowances specified in this subsection shall be paid by the legislative services agency from the amounts appropriated for that purpose.

(d) A member of the commission who is a state employee but who is not a member of the general assembly is not entitled to any of the following:

- (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
- (2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.
- (3) Other expenses actually incurred in connection with the member's duties.

(e) The commission shall meet at least four (4) times each year and at other times as the chairman deems necessary.

(f) The duties of the commission shall include but not be limited to the following:

- (1) Identify minority and women's business enterprises in the state.
- (2) Assess the needs of minority and women's business enterprises.
- (3) Initiate aggressive programs to assist minority and women's business enterprises in obtaining state contracts.
- (4) Give special publicity to procurement, bidding, and qualifying procedures.
- (5) Include minority and women's business enterprises on solicitation mailing lists.
- (6) Define the duties, goals, and objectives of the deputy commissioner of the department as created under this chapter to assure compliance by all state agencies, **separate bodies corporate and politic, and state educational institutions** with state and federal legislation and policy concerning the awarding of contracts to minority and women's business enterprises.
- (7) Establish annual goals:

- (A) for the use of minority and women's business enterprises; and
- (B) derived from a statistical analysis of utilization study of state contracts that are required to be updated every five (5) years.

(8) Prepare a review of the commission and the various affected departments of government to be submitted to the governor and the legislative council on March 1 and October 1 of each year, evaluating progress made in the areas defined in this subsection.

(g) The department shall adopt rules of ethics under IC 4-22-2 for commission members other than commission members appointed under subsection (a)(6) or (a)(7).

(h) The department shall furnish administrative support and staff as is necessary for the effective operation of the commission.

SECTION 3. IC 4-13-16.5-3, AS AMENDED BY P.L.195-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) There is created in the department a deputy commissioner for minority and women's business enterprise development. Upon consultation with the commission, the commissioner of the department, with the approval of the governor, shall appoint an individual who possesses demonstrated capability in business or industry, especially in minority or women's business enterprises, to serve as deputy commissioner to work with the commission in the implementation of this chapter.

(b) The deputy commissioner shall do the following:

- (1) Identify and certify minority and women's business enterprises for state projects.
- (2) Establish a central certification file.
- (3) Periodically update the certification status of each minority or women's business enterprise.
- (4) Monitor the progress in achieving the goals established under section 2(f)(7) of this chapter.
- (5) Require **all** state agencies, **separate bodies corporate and**

politic, and state educational institutions to report on planned and actual participation of minority and women's business enterprises in contracts awarded by state agencies. The commissioner may exclude from the reports uncertified minority and women's business enterprises.

(6) Determine and define opportunities for minority and women's business participation in contracts awarded by **all** state agencies, **separate bodies corporate and politic, and state educational institutions.**

(7) Implement programs initiated by the commission under section 2 of this chapter.

(8) Perform other duties as defined by the commission or by the commissioner of the department."

Page 3, after line 17, begin a new paragraph and insert:

"SECTION 8. [EFFECTIVE JULY 1, 2004] (a) The definitions in IC 4-13-16.5, as amended by this act, apply throughout this SECTION.

(b) As used in this SECTION, "reporting period" refers to the period:

- (1) beginning January 1, 1999; and**
- (2) ending December 31, 2003.**

(c) As used in this SECTION, "small business enterprise" has the meaning set forth in 25 IAC 1.5-1-9.

(d) As used in this SECTION, "special business enterprise" refers to any of the following:

- (1) A minority business enterprise.**
- (2) A small business enterprise.**
- (3) A women's business enterprise.**

(e) Each state agency, separate body corporate and politic, and state educational institution shall analyze the use of special business enterprises in the agency's, body's, or institution's purchasing, construction, and contracting practices.

(f) The analysis required by subsection (e) must include the following information, specified for each special business enterprise type described in subsection (d), for each calendar year in the reporting period, and for a state educational institution, for each campus of the state educational institution:

- (1) Number of contracts awarded.**
- (2) Total dollar amount of contracts awarded.**
- (3) A classification of different contract types awarded by the agency, body, or institution and the number of contracts awarded in each classification.**
- (4) A description of efforts made by the agency, body, or institution to encourage each business enterprise type to do business with the agency, body, or institution during the reporting period.**

(g) The analysis required by subsection (f) must include the same information required for the reporting period by subsection (f) for businesses that are not special business enterprises.

(h) Each agency, body, and institution shall file a written report in electronic format under IC 5-14-6 of the results of the analysis required by this SECTION with the legislative council not later than November 1, 2004.

(i) This SECTION expires January 1, 2006."

Renumber all SECTIONS consecutively.

(Reference is to HB 1436 as printed January 30, 2004.)

CRAWFORD

Motion prevailed. The bill was ordered engrossed.

House Bill 1446

Representative Bauer called down House Bill 1446 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1446-6)

Mr. Speaker: I move that House Bill 1446 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-3.5-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the surtax to:

(1) the department of transportation established by IC 36-3-5-4 for use by the department under law; or

(2) the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.

The city-county council may not appropriate money derived from the surtax for any other purpose.

SECTION 2. IC 6-3.5-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) In the case of a county that does not contain a consolidated city of the first class, the county treasurer shall deposit the surtax revenues in a fund to be known as the "_____ County Surtax Fund".

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county surtax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county surtax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the surtax revenues it receives under this section to:

(1) construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; or

(2) provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.

SECTION 3. IC 6-3.5-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the wheel tax to:

(1) the department of transportation established by IC 36-3-5-4 for use by the department under law; or

(2) an authority established under IC 36-7-23; or

(3) the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.

(b) The city-county council may not appropriate money derived from the wheel tax for any other purpose.

SECTION 4. IC 6-3.5-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In the case of a county that does not contain a consolidated city, the county treasurer shall deposit the wheel tax revenues in a fund to be known as the "County Wheel Tax Fund".

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county wheel tax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county wheel tax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the wheel tax revenues it receives under this section:

(1) to construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; or

(2) as a contribution to an authority established under IC 36-7-23; or

(3) provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6."

Page 5, between lines 29 and 30, begin a new paragraph and insert: **"SECTION 12. IC 8-14.6 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:**

ARTICLE 14.6. LEASE FINANCING FOR LOCAL ROAD PROJECTS

Chapter 1. Legislative Findings of Fact

Sec. 1. The general assembly makes the following findings of fact:

(1) That there exists in cities, towns, and counties in Indiana a need for construction, acquisition, reconstruction, improvement, and extension of local roads in order to

provide for the public welfare and safety by providing safe, dependable, and reliable local roads for vehicular traffic.

(2) That the development and maintenance of the economy of Indiana's cities, towns, and counties requires an adequate system of local roads in order to provide for the public welfare and to facilitate the creation and maintenance of jobs, the increase and stabilization of the tax base, and the general economic welfare of cities, towns, and counties and their citizens.

(3) That it is necessary to serve the public interest and to provide for the public welfare by adopting this article for the purposes described in this article.

Sec. 2. This article provides an additional and alternative method for doing the things authorized by this article, and is supplemental and additional to powers conferred by other laws and not in derogation of any other powers.

Sec. 3. This article is necessary for the welfare of the cities, towns, and counties of Indiana and their inhabitants, and shall be liberally construed to effect the purposes of this article.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Authority" refers to the Indiana transportation finance authority established under IC 8-9.5-8-2.

Sec. 3. "Bonds" refers to bonds of the authority issued under IC 8-14.6-6.

Sec. 4. "Capitalized interest" means interest cost on bonds or notes before and during the period of construction of the local road project for which the bonds or notes were issued, and for a period not to exceed one (1) year after completion of construction.

Sec. 5. "Construction" means the construction, acquisition, reconstruction, improvement, and extension of a local road project.

Sec. 6. "Costs" as applied to any local road project includes any item or cost of a capital nature incurred in the construction of a local road project, including:

- (1) the cost of construction;
- (2) the cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the authority for the construction, including the cost of any relocations incident to the acquisition;
- (3) the cost of demolishing or removing any buildings, structures, or improvements on property acquired by the authority, including the cost of:
 - (A) acquiring any property to which the buildings, structures, or improvements may be moved; or
 - (B) acquiring any property that may be exchanged for property acquired by the authority;
- (4) financing charges;
- (5) costs of issuance of bonds or notes, including costs of credit enhancement, such as bond or note insurance;
- (6) remarketing or conversion fees;
- (7) bond or note discount;
- (8) capitalized interest;
- (9) the cost of funding any reserves to secure the payment of bonds or notes;
- (10) engineering and legal expenses, costs of plans, specifications, surveys, estimates, and any necessary feasibility studies;
- (11) other expenses necessary or incident to determining the feasibility or practicability of constructing any local road project;
- (12) administrative expenses of the authority or one (1) or more local units relating to any local road project financed by bonds or notes;
- (13) reimbursement of one (1) or more local units for:
 - (A) any cost, obligation, or expense incurred by the local unit or units relating to a local road project;
 - (B) advances relating to a local road project from the local unit or units to the authority for surveys, borings, preparation of plans and specifications, or engineering services; or

(C) any other cost of construction incurred by the local unit or units or paid from advances; and

(14) other expenses the authority finds necessary or incident to the construction of the local road project, the financing of the construction, and the placing of the local road project in operation.

Sec. 7. "Local road project" means any:

- (1) road;
- (2) street;
- (3) motorway;
- (4) bridge;
- (5) tunnel;
- (6) overpass;
- (7) underpass;
- (8) interchange;
- (9) entrance;
- (10) approach; or
- (11) other public way;

that is part of the arterial road system, local county roads, arterial street system, or local streets for a local unit for purposes of IC 8-14-2. The term includes all land, rights-of-way, property, rights, easements, materials, and legal or equitable interests necessary for the construction of the local road project.

Sec. 8. "Local unit" means a city, town, or county acting through its fiscal body (as defined in IC 36-1-2-6).

Sec. 9. "Notes" refers to notes of the authority issued under IC 8-14.6-6 and includes any evidences of indebtedness of the authority except bonds.

Sec. 10. "Property owner" means all individuals, copartnerships, associations, governmental units or entities, corporations, limited liability companies, or other legal entities having any title or interest in any land, rights-of-way, property, rights, easements, or legal or equitable interests that may be acquired by the authority.

Sec. 11. "Weighted average life" of an issue of bonds or notes means:

- (1) the sum of the products of the face amount of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory sinking fund redemptions); divided by
- (2) the face amount of the entire issue of bonds or notes.

Sec. 12. "Weighted average useful life" of a local road project or local road projects means:

- (1) the sum of the products of the cost of each asset comprising the local road project or local road projects and the useful life of the respective asset; divided by
- (2) the total cost of all the assets comprising the local road project or local road projects.

For purposes of this computation, the useful life of land is fifty (50) years. The useful life of all other assets comprising the local road project shall be conclusively evidenced by a certificate of the local unit, supported by a statement from the local unit's consulting engineer. The weighted average useful life of any local road project shall be determined as of the later of the date on which the local road project is expected to be placed in service and the date on which the bonds or notes are issued.

Chapter 3. General Provisions

Sec. 1. The authority shall contract with one (1) or more local units for construction, ownership, maintenance, and operation of local road projects.

Sec. 2. The authority shall finance local road projects in accordance with this article.

Sec. 3. The authority may exercise any powers provided under this article in participation or cooperation with any governmental entity and enter into any contracts to facilitate that participation or cooperation without compliance with any other statute. This article constitutes complete authority for the authority to carry out its powers and duties under this article. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the authority or any other officer, department, agency, or instrumentality of the state or any political subdivision are required for the authority to carry out its powers and duties, except as prescribed in this article.

Sec. 4. The authority may pay the cost of construction of a

local road project from any funds available to the authority under this article or any other law.

Sec. 5. The authority may sell, transfer, lease, or otherwise convey any land, rights-of-way, property, rights, easements, or legal or equitable interest it considers necessary or convenient for carrying out this article, including disposal of unused or surplus property.

Sec. 6. The authority may acquire by purchase, whenever it considers a purchase expedient, any land, rights-of-way, property, rights, easements, or other legal or equitable interests as it considers necessary or convenient for the construction and operation of any local road project. A purchase under this section shall be made upon the terms and at the price agreed upon between the authority and the property owner.

Sec. 7. The authority may make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article or any other law. These contracts or agreements are not subject to any approvals other than the approval of the authority and may be for any term of years and contain any terms that are considered reasonable by the authority.

Sec. 8. The authority may employ and fix the compensation of financial advisors and underwriters, bond counsel, other attorneys with the approval of the attorney general, and other employees, independent contractors, and agents as necessary in its judgment to carry out this article. The authority is subject to the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes.

Sec. 9. The authority may accept gifts, devises, bequests, grants, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and agree to and comply with conditions attached to the aid.

Sec. 10. The authority may accept the transfer of any local road project to the authority.

Sec. 11. (a) Except as provided in subsection (b), the authority may, in the manner provided by IC 8-23-7, acquire by appropriation any land, rights-of-way, property, rights, easements, or other legal or equitable interests necessary or convenient for the construction or the efficient operation of any local road project. However, compensation for the property taken shall first be made in money as provided by law.

(b) The authority may take or disturb property or facilities that:

- (1) belong to any public utility or to a common carrier engaged in interstate commerce;
- (2) are required for the proper and convenient operation of the public utility or common carrier; and
- (3) are not located within the limits of local road projects being constructed under this article;

only if provision is made for the restoration, relocation, or duplication of the property or facilities elsewhere at the cost of the authority.

Sec. 12. The authority may do all things necessary or proper to carry out this article.

Sec. 13. A local unit may convey, transfer, lease, or sell, with or without consideration, real property of any nature (including buildings, structures, improvements, land, rights-of-way, easements, and legal or equitable interests), title to which is held in the name of the local unit, to the authority, without being required to advertise or solicit bids or proposals, in order to accomplish the governmental purposes of this article.

Sec. 14. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments of the state or any political subdivision of the state.

Chapter 4. Contracts With Local Units

Sec. 1. The authority is responsible for the construction, leasing, and ownership of local road projects. With respect to each local road project, the authority and one (1) or more local units may enter into a contract for the purposes set forth in this chapter. If the authority and the local unit or units decide to enter into a contract under this chapter, the authority and the local unit or units may enter into a separate contract for each

local road project or a master contract for several local road projects.

Sec. 2. A contract under this chapter must:

- (1) provide for the construction and ownership of the local road project; and
- (2) describe the local road project or local road projects, setting forth in general terms principal features such as geographic location, widths of rights-of-way, number of lanes in each direction, width of traffic lanes, widths of shoulders, location and nature of tunnels, overpasses, underpasses, interchanges, bridges, approaches, and connecting roads, streets, and highways.

Sec. 3. The contract may include the following:

- (1) Provisions for payment by the authority to the local unit or units of all costs incurred by the local unit or units in the performance of the contracts, including all costs of construction, salaries, wages, and associated costs of personnel attributable to performance of the contract.
- (2) Other terms and conditions that the authority and the local unit or units consider appropriate.

Sec. 4. Notwithstanding any other law, a local unit may enter into a contract with the authority by negotiating the contract with the authority and without complying with the requirements of any other law. A local unit shall observe any existing contractual commitments to the holders of bonds or notes or other persons when entering into a contract.

Chapter 5. Leases With Local Units

Sec. 1. (a) In addition to its other powers, one (1) or more local units may enter into a lease or leases with the authority under section 2 or 3 of this chapter for any or all of the purposes set forth in this article. Notwithstanding any other law, a local unit may enter into a lease with the authority by negotiating the lease with the authority and without complying with the requirements of any other law. A local unit shall observe any existing contractual commitments to the holders of bonds or notes or other persons when entering into a lease.

(b) The authority has all the powers necessary and incidental to carry out the terms and conditions of leases under this chapter.

(c) If the authority and one (1) or more local units decide to enter into a lease under this chapter, the authority and the local unit or units may enter into a separate lease for each local road project or may enter into one (1) or more master leases for several local road projects.

Sec. 2. (a) A lease entered into under this section must include the following:

- (1) A statement that the term of the lease is for a period cointensive with the biennium used for state budgetary and appropriation purposes with a fractional period when the lease begins, if necessary.
- (2) A statement that the term of the lease is extended from biennium to biennium, with the extensions not to exceed a lease term of twenty-five (25) years, unless either the authority or the local unit or units give notice of nonextension at least six (6) months before the end of a biennium, in which event the lease expires at the end of the biennium in which the notice is given.
- (3) A provision plainly stating that the lease does not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely from the sources described in section 6 of this chapter, for the actual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.
- (4) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full:

- (A) the debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by the authority; and
 - (B) additional rent as provided by the lease;
- subject to the appropriation of money by the local unit or

units to pay lease rentals.

(5) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(6) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rental payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

(c) The fiscal officer (as defined in IC 36-1-2-7) of the local unit shall request an appropriation from the local unit for payment of lease rentals on any lease entered into under this section in writing at a time sufficiently in advance of the date for payment of the lease rentals so that an appropriation may be made in the normal budgetary process of the local unit.

Sec. 3. (a) A lease entered into under this section must include the following:

(1) The term of the lease, which may not exceed the weighted average useful life of the local road project or local road projects.

(2) A provision plainly stating that the lease does not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely for the annual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.

(3) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full the following:

(A) The debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by the authority.

(B) Additional rent as provided by the lease.

(4) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(5) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rental payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

Sec. 4. If a local unit fails at any time to pay to the authority when due any lease rentals on any lease under this chapter, the chairman of the authority shall immediately report the unpaid amount in writing to the general assembly and the governor.

Sec. 5. A local unit or units may lease any property under its control to the authority for construction of a local road project, which local road project may be leased to the local unit or units.

Sec. 6. (a) A local unit shall pay lease rentals for leases entered into under this chapter from revenues from any combination of the following sources:

(1) Money payable to the local unit from the motor vehicle highway account.

(2) Money payable to the local unit from the local road and street account.

(3) Revenues from the county motor vehicle excise surtax.

(4) Revenues from the county wheel tax.

(5) Federal transportation revenues apportioned or allocated to the state and distributed to the local unit by the Indiana department of transportation.

(6) Any other source of revenues (other than property taxes) that is legally available to the local unit.

(b) A local unit may, in the manner provided by IC 5-1-14-4, pledge the revenues described in this section for the payment of lease rentals. However, in making a pledge the local unit shall not commit money required to provide adequate funding for other local road needs.

Sec. 7. If a local unit pledges money from the motor vehicle highway account or the local road and street account, or both, for the payment of lease rentals for leases entered into under this chapter, the local unit shall immediately provide the auditor of state with a written notice setting forth the terms of the pledge and directing the auditor of state to:

(1) withhold the amounts pledged from the distributions that are otherwise payable to the local unit under IC 8-14-1-3 or IC 8-14-2-4, or both; and

(2) pay the amounts withheld to the authority.

Notwithstanding IC 8-14-1-3 and IC 8-14-2-4, the auditor of state shall withhold and pay to the authority the amounts specified in the notice.

Sec. 8. Notwithstanding any other provision of law, to the extent that any department or agency of the state, including the treasurer of state, is the custodian of money payable to a local unit (other than for goods or services provided by the local unit), at any time after written notice to the department or agency head from the authority that the local unit is in default on the payment of lease rentals for a lease entered into under this chapter, the department or agency shall withhold the payment of that money from the local unit and pay over the money to the authority for the purpose of paying the lease rentals.

Sec. 9. The requirements of sections 7 and 8 of this chapter to withhold amounts due under a lease do not create a debt of the state or a local unit for purposes of the Constitution of the State of Indiana.

Chapter 6. Issuance of Bonds and Notes

Sec. 1. Subject to sections 2 and 5 of this chapter, and before July 1, 2007, the authority shall, by resolution, issue and sell bonds or notes of the authority to provide funds to carry out this article with respect to the construction of a local road project or local road projects or the refunding of any bonds or notes, together with any reasonable costs associated with a refunding.

Sec. 2. Before the issuance of bonds or notes, the authority must receive the approval of the budget agency.

Sec. 3. (a) The construction of a local road project may not be financed under this article, if at the time the lease with respect to the local road project is initially entered into, the weighted average useful life of the local road project is less than five (5) years.

(b) For purposes of this section and section 5 of this chapter, a certificate of the local unit, supported by a statement from the local unit's consulting engineer, as to the weighted average useful life of the local road project is conclusive with respect to the matters contained in the certificate.

(c) If any bonds or notes bear interest at a variable or adjustable rate, lease rentals under any lease or leases attributable to debt service shall be fixed over the term of the lease or leases based on the fair and reasonable value of the local road project or local road projects leased.

Sec. 4. (a) Before issuing a series of bonds or notes, the authority shall publish a notice of its determination to issue the bonds or notes. The notice shall be published:

(1) one (1) time in two (2) newspapers published and of general circulation in the city of Indianapolis; and

(2) one (1) time in one (1) newspaper published and of general circulation in each local unit that proposes to enter into a lease of the local road projects to be financed by the bonds or notes.

(b) No action to contest the validity of:

(1) any contract entered into by one (1) or more local units and the authority before the bonds or notes are issued;

(2) any lease entered into by one (1) or more local units and

the authority before the bonds or notes are issued to secure a series of bonds or notes; or

(3) a series of bonds or notes issued by the authority; may be brought against the authority after the fifteenth day following publication of the notice required by subsection (a)(1) or against a local unit after the fifteenth day following publication of the notice under subsection (a)(2).

(c) If a lease or contract is entered into under this chapter after bonds or notes relating to the lease or contract are issued, the authority may publish notice of execution of the lease or contract as set forth in subsection (a). No action against the authority to contest the validity of such a lease or contract may be brought after the fifteenth day following publication of the notice under subsection (a)(1) or against a local unit after the fifteenth day following publication of the notice under subsection (a)(2).

(d) If an action against the authority or a local unit challenging a lease, a contract, bonds, or notes is not brought within the time prescribed by this section, the lease, contract, bonds, or notes shall be conclusively presumed to be fully authorized and valid under the laws of the state and any person or entity is estopped from further questioning the authorization, validity, execution, delivery, or issuance of the contract, lease, bonds, or notes.

Sec. 5. (a) The bonds or notes must indicate on their face:

- (1) the maturity date or dates, as determined under subsection (b);
- (2) the interest rate or rates (whether fixed, variable, or a combination of fixed and variable) or the manner in which the interest rate or rates will be determined if variable or adjustable rates are used;
- (3) registration privileges and place of payment, including provisions for book entry obligations as set forth in IC 5-1-15;
- (4) the conditions and terms under which the bonds or notes may be redeemed or prepaid before maturity; and
- (5) the source of payment as set forth in section 10 of this chapter.

(b) The weighted average life of the bonds or notes may not exceed the sum of:

- (1) the weighted average useful life of the local road project or local road projects to be financed from the proceeds of the bonds or notes; plus
- (2) the period of construction of the local road project or local road projects.

Sec. 6. The bonds or notes:

- (1) shall be executed by the manual or facsimile signature of the chairman or vice chairman of the authority;
- (2) shall be attested by the manual or facsimile signature of the secretary-treasurer or assistant secretary-treasurer of the authority;
- (3) shall be imprinted or impressed with the seal of the authority by any means;
- (4) may be authenticated by a trustee, registrar, or paying agent; and
- (5) constitute valid and binding obligations of the authority, even if the chairman, vice chairman, secretary-treasurer, or assistant secretary-treasurer whose manual or facsimile signature appears on the bonds or notes no longer holds that office.

Sec. 7. The bonds or notes, when issued, have all the qualities of negotiable instruments, subject to provisions for registration, under IC 26 and are incontestable in the hands of a bona fide purchaser or owner of the bonds or notes for value.

Sec. 8. The bonds or notes may be sold by the authority at a public or a negotiated sale at a time or times determined by the authority and at a premium or discount as determined by the authority. In determining the amount of bonds or notes to be issued and sold, the authority may include the costs of construction or of refunding bonds or notes, including reasonable debt service reserves, and all other expenses necessary or incident to the construction of the local road project, a refunding, or the issuance of the bonds or notes.

Sec. 9. The proceeds of the bonds or notes are appropriated for the purpose for which the bonds or notes may be issued and the proceeds shall be deposited and disbursed in accordance with any

provisions and restrictions that the authority may provide in the resolution or trust agreement authorizing the issuance of the bonds or notes. The maturities of the bonds or notes, the rights of the owners, and the rights, duties, and obligations of the authority are governed in all respects by this article and the resolution or trust agreement.

Sec. 10. The bonds or notes:

- (1) constitute the corporate obligations of the authority;
- (2) do not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation; and
- (3) are payable solely as to both principal and interest from:
 - (A) the revenues from a lease to one (1) or more local units, if any;
 - (B) proceeds of bonds or notes, if any; or
 - (C) investment earnings on proceeds of bonds or notes.

Sec. 11. The provisions of this article and the covenants and undertakings of the authority as expressed in any proceedings preliminary to or in connection with the issuance of the bonds or notes may be enforced, subject to the provisions of any resolution or trust agreement, by a bond or note owner by action for injunction or mandamus against the authority or any officer, agent, or employee of the authority. However, no action for monetary judgment may be brought against the state for any violations of this article or for payment of the bonds or notes of the authority.

Sec. 12. All bonds or notes issued under this article are issued by a body corporate and politic of this state, but not a state agency, and for an essential public and governmental purpose. The bonds and notes, the interest on the bonds and notes, the proceeds received by an owner from the sale of the bonds or notes to the extent of the owner's cost of acquisition, proceeds received upon redemption for maturity, proceeds received at maturity, and the receipt of the interest and proceeds are exempt from taxation for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

Sec. 13. Notwithstanding any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds or notes issued under this chapter.

Sec. 14. Bonds or notes issued under this chapter are exempt from the registration requirements of IC 23-2-1 and any other state securities registration statutes.

Sec. 15. A pledge of lease rentals, proceeds of bonds or notes, investment earnings on those proceeds, or other money pledged by the authority is binding from the time the pledge is made. Lease rentals, proceeds of bonds or notes, investment earnings on those proceeds, or other money pledged by the authority and thereafter received by the authority or its trustee or fiduciary is immediately subject to the lien of the pledge without any further act, and the lien of the pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether the parties have notice of the lien. A resolution, trust agreement, or any other instrument by which a pledge is created is required to be filed or recorded only in the records of the authority.

Sec. 16. The authority may obtain from a department or an agency of the state or of the United States, or from a nongovernmental insurer, available insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal, or any debt service reserve funds, on bonds or notes issued by the authority, or on securities purchased or held by the authority.

Sec. 17. The authority may enter into agreements with an entity to provide credit enhancement or liquidity support for any bonds or notes issued by the authority, or for any debt service reserves securing any bonds or notes, with terms that are reasonable and proper, in the discretion of the authority, and not in violation of law. The authority may execute and deliver notes to evidence its obligation to make payments under such an agreement, but these notes must conform to this article in all

respects.

Sec. 18. The authority may enter into agreements or contracts with any financial institution as may be necessary, desirable, or convenient in the opinion of the authority for rendering services in connection with:

- (1) the care, custody, or safekeeping of securities or other investments held or owned by the authority;
- (2) the payment or collection of amounts payable as to principal or interest; and
- (3) the delivery to the authority of securities or other investments purchased or sold by it.

The authority may also, in connection with any of the services rendered by a financial institution as to custody and safekeeping of its securities or investments, require security in the form of collateral bonds, surety agreements, or security agreements as, in the opinion of the authority, is necessary or desirable.

Sec. 19. (a) In the discretion of the authority, any bonds and notes issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana. Such a trust agreement may also provide for a cotrustee, which may be any trust company or bank in Indiana or another state.

(b) The trust agreement or the resolution providing for the issuance of the bonds or notes may contain provisions for protecting and enforcing the rights and remedies of the owners of bonds or notes as may be reasonable and proper, in the discretion of the authority, and not in violation of law.

(c) The trust agreement or resolution may set forth the rights and remedies of the owners of any bonds or notes of the trustee and may restrict the individual right of action by the owners.

(d) Any trust agreement or resolution may contain other provisions that the authority considers reasonable and proper for the security of the owners of bonds or notes.

(e) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from money pledged or assigned to the payment of the principal of and interest on bonds or notes or from any other funds available to the authority.

Sec. 20. The authority may purchase bonds or notes of the authority out of its funds or money available for the purchase of its own bonds or notes. The authority may hold, cancel, or resell the bonds or notes subject to, and in accordance with, agreements with owners of its bonds or notes. Unless canceled, bonds or notes so held shall be considered to be held for resale or transfer and the obligation evidenced by the bonds or notes shall not be considered to be extinguished.

Sec. 21. Funds or money held by the authority under any trust agreement or resolution may be invested pending disbursement as provided in the trust agreement or the resolution. Such an investment is not restricted by or subject to the provisions of any other law.

Chapter 7. Reserve Fund for Bonds and Notes

Sec. 1. (a) The authority may establish and maintain a reserve fund for each issue of bonds or notes in which there shall be deposited or transferred:

- (1) all money appropriated by the general assembly for the purpose of the fund in accordance with section 3(a) of this chapter;
- (2) all proceeds of bonds or notes required to be deposited in the fund under the terms of:
 - (A) a contract between the authority and the holders of the bonds or notes; or
 - (B) a resolution of the authority with respect to the proceeds of bonds or notes;
- (3) all other money appropriated by the general assembly to a reserve fund; and
- (4) any other money or funds of the authority that it decides to deposit in the fund.

(b) Subject to section 3(b) of this chapter, money in any reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds or notes of the authority as the interest and principal become due and payable and for the retirement of bonds or notes. The money may not be withdrawn if a withdrawal would reduce the amount in the reserve fund to

an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds or notes and the principal of bonds or notes then maturing and payable, whether by reason of maturity or mandatory redemption, for which payments other money of the bank is not then available. As used in this chapter, "required debt service reserve" means, as of the date of computation, the amount required to be on deposit in the reserve fund as provided by resolution or trust agreement of the authority.

(c) Money in any reserve fund that exceeds the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds or notes.

Sec. 2. For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution or trust agreement of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the money or investments in the reserve fund.

Sec. 3. (a) In order to assure the maintenance of the required debt service reserve in any reserve fund, the general assembly may annually appropriate to the authority for deposit in one (1) or more of the funds the sum, certified by the authority to the general assembly, that is necessary to restore one (1) or more of the funds to an amount equal to the required debt service reserve. Before December 1 of each year, the authority shall make and deliver to the general assembly a certificate stating the sum required to restore the funds to that amount. Nothing in this subsection creates a debt or liability of the state to make any appropriation.

(b) All amounts received on account of money appropriated by the state to any reserve fund shall be held and applied in accordance with section 1(b) of this chapter. However, at the end of each fiscal year, if the amount in any reserve fund exceeds the required debt service reserve, any amount representing earnings or income received on account of any money appropriated to the reserve fund that exceeds the expenses of the authority for that fiscal year may be transferred to the state general fund.

Sec. 4. Subject to the provisions of any agreement with its holders, the bank may combine a reserve fund established for an issue of bonds or notes into one (1) or more reserve funds."

Renumber all SECTIONS consecutively.

(Reference is to HB 1446 as printed January 30, 2004.)

LIGGETT

Motion prevailed.

HOUSE MOTION (Amendment 1446-3)

Mr. Speaker: I move that House Bill 1446 be amended to read as follows:

Page 5, line 5, delete "the greater" and insert "fifty percent (50%) of the remainder".

Page 5, deletes line 6 through 7.

Page 5, line 8, delete "(A)", begin a new line block indented and insert:

"(1)".

Page 5, line 12, delete "(B)", begin a new line block indented and insert:

"(2)".

(Reference is to HB 1446 as printed January 30, 2004.)

ESPICH

Motion prevailed.

HOUSE MOTION (Amendment 1446-7)

Mr. Speaker: I move that House Bill 1446 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-6-1.1-201, AS AMENDED BY P.L.192-2002(ss), SECTION 132, IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 201. (a) Before January 1, 2005, a license tax of eighteen cents (\$0.18) per gallon is imposed on the use of all gasoline used in Indiana, except as otherwise provided by this chapter.

(b) After December 31, 2004, a one cent (\$0.01) per mile license tax is imposed on the use of all gasoline used in Indiana, except as otherwise provided by this chapter. The one cent (\$0.01) per mile license tax is converted annually to a per gallon rate as provided in section 201.2 of this chapter.

(c) The distributor shall initially pay the tax on the billed gallonage of all gasoline the distributor receives in this state, less any deductions authorized by this chapter. The distributor shall then add the per gallon amount of tax to the selling price of each gallon of gasoline sold in this state and collected from the purchaser so that the ultimate consumer bears the burden of the tax.

SECTION 2. IC 6-6-1.1-201.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 201.2. (a) As used in this section, "CPI" refers to the United States Bureau of Labor Statistics Consumer Price Index, all items, all urban consumers, or its successor index.

(b) As used in this section, "motor fuel" has the meaning set forth in IC 6-6-4.1-1(g).

(c) The per gallon conversion of the cents per mile license tax imposed under section 201 of this chapter is the amount determined in STEP SEVEN of the following formula, rounded to the nearest one-tenth cent (\$0.001):

STEP ONE: Divide:

(A) the Indiana motor vehicle miles of travel (VMT) for the calendar year immediately preceding the calendar year in which the new per gallon conversion rate must be published under subsection (d), as reported by the United States Federal Highway Administration; by

(B) the certified taxable gallons of motor fuel for the calendar year immediately preceding the calendar year in which the new per gallon conversion rate must be published under subsection (d), as reported by the department;

to determine the current average miles per gallon (AMPG). STEP TWO: Multiply the AMPG calculated under STEP ONE by the cents per mile license tax imposed under section 201 of this chapter.

STEP THREE: For calendar years 2005 and 2006, determine the percentage change between the CPI as last reported for calendar year 2002 and the CPI as last reported for the previous calendar year. For calendar year 2007 and each calendar year thereafter, determine the percentage change between the CPI as last reported for calendar year 2004 and the CPI as last reported for the previous calendar year.

STEP FOUR: Express the percentage change determined in STEP THREE as a three (3) digit decimal rounded to the nearest thousandth.

STEP FIVE: Add one (1) to the decimal determined in STEP FOUR.

STEP SIX: Multiply the STEP TWO amount by the sum determined in STEP FIVE.

STEP SEVEN: For calendar year 2005, determine the greater of the STEP SIX amount or eighteen cents (\$0.18). For calendar years beginning after December 31, 2005, determine the greater of:

(A) the STEP SIX result; or

(B) the amount determined under this subsection for the previous calendar year.

(d) Not later than November 1 of each year, the department shall:

(1) publish the annual tax rate in effect for the following calendar year in the Indiana Register; and

(2) widely disseminate information concerning the applicability of the per gallon conversion rate.

(e) Not later than November 1 of each year, the department shall publish in the Indiana Register and widely disseminate information concerning:

(1) the certified taxable gallons of fuel; and

(2) the Indiana vehicle miles of travel; used in the calculation of the per gallon conversion rate under subsection (c).

SECTION 3. IC 6-6-1.1-502 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 502. (a) Except as provided in subsection (b), at the time of filing each monthly report, each distributor shall pay to the administrator the full amount of tax due under this chapter for the preceding calendar month, computed as follows:

(1) Enter the total number of invoiced gallons of gasoline received during the preceding calendar month.

(2) Subtract the number of gallons for which deductions are provided by sections 701 through 705 of this chapter from the number of gallons entered under subdivision (1).

(3) Subtract the number of gallons reported under section 501(3) of this chapter.

(4) Multiply the number of invoiced gallons remaining after making the computation in subdivisions (2) and (3) by the tax rate prescribed by section 201 of this chapter (with respect to gasoline received before January 1, 2005) or the tax rate determined under section 201.2 of this chapter (with respect to gasoline received after December 31, 2004) to compute that part of the gasoline tax to be deposited in the highway, road and street fund under section 802(2) of this chapter or in the motor fuel tax fund under section 802(3) of this chapter.

(5) Multiply the number of gallons subtracted under subdivision (3) by the tax rate prescribed by section 201 of this chapter (with respect to gasoline received before January 1, 2005) or the tax rate determined under section 201.2 of this chapter (with respect to gasoline received after December 31, 2004) to compute that part of the gasoline tax to be deposited in the fish and wildlife fund under section 802(1) of this chapter.

(b) If the department determines that a distributor's:

(1) estimated monthly gasoline tax liability for the current year; or

(2) average monthly gasoline tax liability for the preceding year; exceeds ten thousand dollars (\$10,000), the distributor shall pay the monthly gasoline taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

SECTION 4. IC 6-6-1.1-606.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 606.6. (a) Except as provided in subsection (c), every person included within the terms of section 606(a) of this chapter who transports gasoline in a vehicle on the highways of Indiana in a vehicle having a total tank capacity of less than eight hundred fifty (850) gallons is liable to the state for a penalty equal to the rate provided in section ~~201~~ 201.2 of this chapter on all gasoline transported into Indiana and delivered to any person other than a licensed distributor.

(b) Except as provided in subsection (c), every person included within the terms of section 606(c) of this chapter who transports gasoline in a vehicle on the highways of Indiana is liable to the state for a penalty equal to the rate provided in section ~~201~~ 201.2 of this chapter on all gasoline:

(1) received by the person for transportation to a point outside Indiana;

(2) not in fact transported to a point outside Indiana; and

(3) in fact delivered to a person other than a licensed distributor inside Indiana.

(c) The following are excluded when computing any liability under this section:

(1) All deliveries of gasoline when the tax imposed by law was charged or collected by the parties under the circumstances described in this section.

(2) Deliveries of gasoline used in computing the tax under section 301 of this chapter."

Page 5, after line 40, begin a new paragraph and insert:

"SECTION 8. [EFFECTIVE JULY 1, 2004] (a) The department of state revenue, before November 1, 2004, shall publish in the Indiana Register the per gallon conversion rate determined under

IC 6-6-1.1-201.2, as added by this act, that is applicable for the calendar year beginning January 1, 2005.

(b) IC 6-6-1.1-606.6, as amended by this act, applies to gasoline used after December 31, 2004.

(c) This SECTION expires January 1, 2006."

Renumber all SECTIONS consecutively.

(Reference is to HB 1446 as printed January 30, 2004.)

SCHOLER

Representative Pelath rose to a point of order, citing Rule 118, stating that the motion was attempting to incorporate into House Bill 1446 a bill pending before the House. The Chair ruled the point was well taken and the motion was out of order.

There being no further amendments, the bill was ordered engrossed.

House Bill 1230

Representative Bardon called down House Bill 1230 for second reading. The bill was read a second time by title. There being no amendments, the bill was ordered engrossed.

House Bill 1344

Representative Welch called down House Bill 1344 for second reading. The bill was read a second time by title. There being no amendments, the bill was ordered engrossed.

House Bill 1059

Representative Stilwell called down House Bill 1059 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1059-3)

Mr. Speaker: I move that House Bill 1059 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 3-6-4.1-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.5. As used in this chapter, **"nominating organization"** refers to either of the following:

(1) **Common Cause of Indiana.**

(2) **The League of Women Voters of Indiana."**

Page 3, line 9, after "individual" insert **"from among those"**.

Page 3, line 10, delete "Common Cause of Indiana" and insert **"the nominating organizations"**.

Page 3, between lines 18 and 19, begin a new line blocked left and insert: **"Each nominating organization may nominate one (1) individual to be the commission's chair."**

Page 3, line 20, delete "Common Cause" and insert **"each nominating organization. Each nominating organization may nominate one (1) individual to be the commission's chair."**

Page 3, line 21, delete "of Indiana."

Page 3, line 21, delete "the" and insert **"an"**.

Page 3, line 21, after "individual" insert **"from among those"**.

Page 3, line 22, delete "Common Cause of Indiana" and insert **"the nominating organizations"**.

Renumber all SECTIONS consecutively.

(Reference is to HB 1059 as printed January 30, 2004.)

STILWELL

The Chair ordered the roll of the House to be called. Roll Call 104: yeas 49, nays 47. Motion prevailed.

HOUSE MOTION
(Amendment 1059-1)

Mr. Speaker: I move that House Bill 1059 be amended to read as follows:

Page 1, delete lines 4 through 5, begin a new line block indented and insert:

"(1) The secretary of state, who serves as the commission's chair. Except as provided in section 7 of this chapter, the chair is a nonvoting member of the commission."

Page 3, delete lines 6 through 25.

Page 4, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 7. IC 3-6-4.1-6 IS REPEALED [EFFECTIVE UPON PASSAGE]."

Renumber all SECTIONS consecutively.

(Reference is to HB 1059 as printed January 30, 2004.)

THOMPSON

Upon request of Representatives Thompson and Bosma, the Chair ordered the roll of the House to be called. Roll Call 105: yeas 48, nays 48. Motion failed. The bill was ordered engrossed.

House Bill 1438

Representative Klinker called down House Bill 1438 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1438-3)

Mr. Speaker: I move that House Bill 1438 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-1.5-4-2, AS ADDED BY P.L.224-2003, SECTION 260, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The board is composed of the following twenty-three (23) members, none of whom may be members of the general assembly:

(1) ~~Three (3)~~ **Fifteen (15)** persons appointed by the governor who must be employed in or retired from the private or nonprofit sector. **The following apply to appointments under this subdivision:**

(A) The governor shall consider the recommendation of the speaker of the house of representatives when making one (1) appointment.

(B) The governor shall consider the recommendation of the minority leader of the house of representatives when making one (1) appointment.

(C) The governor shall consider the recommendation of the president pro tempore of the senate when making one (1) appointment.

(D) The governor shall consider the recommendation of the minority leader of the senate when making one (1) appointment.

(2) The lieutenant governor.

(3) ~~Three (3)~~ persons appointed by the speaker of the house of representatives who must be employed in or retired from the private or nonprofit sector.

(4) ~~Three (3)~~ persons appointed by the minority leader of the house of representatives who must be employed in or retired from the private or nonprofit sector.

(5) ~~Three (3)~~ persons appointed by the president pro tempore of the senate who must be employed in or retired from the private or nonprofit sector.

(6) ~~Three (3)~~ persons appointed by the minority leader of the senate who must be employed in or retired from the private or nonprofit sector.

(7) ~~One (1)~~ person appointed by the president of Indiana University who must be employed in or retired from the private or nonprofit sector or academia.

(8) ~~One (1)~~ person appointed by the president of Purdue University who must be employed in or retired from the private or nonprofit sector or academia.

(9) ~~One (1)~~ person appointed by the president of Indiana State University who must be employed in or retired from the private or nonprofit sector or academia.

(10) ~~One (1)~~ person appointed by the president of Ball State University who must be employed in or retired from the private or nonprofit sector or academia.

(11) ~~One (1)~~ person appointed by the president of the University of Southern Indiana who must be employed in or retired from the private or nonprofit sector or academia.

(12) ~~One (1)~~ person appointed by the president of Ivy Tech State College who must be employed in or retired from the private or nonprofit sector or academia.

(13) ~~One (1)~~ person appointed by the president of Vincennes University who must be employed in or retired from the private

or nonprofit sector or academia:

(3) Seven (7) persons appointed by the governor who must be employed in or retired from the private or nonprofit sector or academia, on recommendation of the following:

- (A) The president of Indiana University.**
- (B) The president of Purdue University.**
- (C) The president of Indiana State University.**
- (D) The president of Ball State University.**
- (E) The president of the University of Southern Indiana.**
- (F) The president of Ivy Tech State College.**
- (G) The president of Vincennes University.**

SECTION 2. IC 4-1.5-4-3, AS ADDED BY P.L.224-2003, SECTION 260, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. Subject to section 4 of this chapter, ~~the terms of office of the voting members of the board are as follows:~~

~~(1) members appointed by the governor president pro tempore of the senate, or minority leader of the senate serve for terms of four (4) years.~~

~~(2) Members appointed by the speaker of the house of representatives, the minority leader of the house of representatives, or the president of a university or college serve for terms of two (2) years.~~

Each member shall hold office for the term of appointment and shall continue to serve after expiration of the appointment until a successor is appointed and qualified. Members are eligible for reappointment."

Renumber all SECTIONS consecutively.

(Reference is to HB 1430 as printed January 30, 2004.)

BOSMA

Motion prevailed. The bill was ordered engrossed.

House Bill 1437

Representative Crawford called down House Bill 1437 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1437-1)

Mr. Speaker: I move that House Bill 1437 be amended to read as follows:

Page 3, line 13, delete "the judge of".

Page 3, line 13, after "a" insert "**certified**".

Page 3, line 13, after "court" insert "**or a certified court alcohol and drug services program**".

Page 5, line 16, delete "community corrections advisory board established" and insert "**county shall develop a controlled substance rehabilitation program to do the following:**".

Page 5, delete lines 17 through 21.

Page 5, run in lines 16 through 22.

Page 5, line 26, delete "crime" and insert "**forcible felony**".

Page 5, line 27, delete "involving serious bodily injury".

Page 5, line 36, after "4." insert "**(a)**".

Page 5, line 36, delete "program:" and insert "**program may be operated by a:**".

Page 5, delete lines 37 through 41 and begin a new line block indented and insert:

"(1) community corrections advisory board;

(2) drug court certified by the Indiana judicial center under IC 12-23-14.5; or

(3) a court alcohol and drug services program certified by the Indiana judicial center under IC 12-23-14.

(b) A controlled substance rehabilitation program must be certified by the division of mental health and addiction if the controlled substance rehabilitation program is operated by a community corrections advisory board."

Page 6, line 3, delete "services:" and insert "**services directly or indirectly:**".

Page 6, line 30, delete "to:" and insert "**to the entity that operates the controlled substance rehabilitation program.**".

Page 6, delete lines 31 through 34.

(Reference is to HB 1437 as printed January 30, 2004.)

PIERCE

Motion prevailed. The bill was ordered engrossed.

House Bill 1277

Representative Bottorff called down House Bill 1277 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1277-2)

Mr. Speaker: I move that House Bill 1277 be amended to read as follows:

Page 7, line 17, before "application." insert "**completed**".

(Reference is to HB 1277 as printed January 30, 2004.)

PIERCE

Motion prevailed.

HOUSE MOTION
(Amendment 1277-5)

Mr. Speaker: I move that House Bill 1277 be amended to read as follows:

Page 3, line 2, delete "March" and insert "**January**".

(Reference is to HB 1277 as printed January 30, 2004.)

PIERCE

Motion prevailed. The bill was ordered engrossed.

OTHER BUSINESS ON THE SPEAKER'S TABLE

HOUSE MOTION

Mr. Speaker: I move that when we do adjourn, we adjourn until Thursday, February 5, 2004 at 9:00 a.m.

L. LAWSON

Motion prevailed.

PETITION TO CHANGE VOTING RECORD

Mr. Speaker: Pursuant to House Rule 75, I hereby petition to change my voting record on Representative Turner's second reading amendment to House Bill 1365 (1365-4), Roll Call 96, on February 4, 2004. In support of this petition, I submit the following reason:

"I was present in the House, but when I attempted to vote, I inadvertently pushed the nay button when I intended to vote yea."

RESKE

There being a constitutional majority voting in favor of the petition, the petition was adopted. [*Journal Clerk's note: this changes the vote tally for Roll Call 96 to 52 yeas, 43 nays.*]

HOUSE MOTION

Mr. Speaker: I move that House Bill 1195 be withdrawn.

PFLUM

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Ayres be added as coauthor of House Bill 1135.

EVERY

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Ripley be added as coauthor of House Bill 1273.

FRY

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Thomas be added as coauthor of House Bill 1300.

BOTTORFF

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representatives Dvorak, Murphy, and Austin be added as coauthors of House Bill 1325.

HASLER

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representatives Stilwell, Becker, and Van Haaften be added as coauthors of House Bill 1352.

HASLER

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Austin be added as coauthor of House Bill 1434.

CRAWFORD

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Foley be added as coauthor of House Bill 1435.

BEHNING

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Stilwell be added as cosponsor of Engrossed Senate Bill 75.

BISCHOFF

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Goodin be added as cosponsor of Engrossed Senate Bill 83.

FOLEY

Motion prevailed.

Pursuant to House Rule 60, committee meetings were announced.

On the motion of Representative Espich, the House adjourned at 11:59 p.m., this fourth day of February, 2004, until Thursday, February 5, 2004, at 9:00 a.m.

B. PATRICK BAUER

Speaker of the House of Representatives

DIANE MASARIU CARTER

Principal Clerk of the House of Representatives